

Washington, Thursday, March 2, 1950

# TITLE 3—THE PRESIDENT PROCLAMATION 2873

ARMED FORCES DAY, 1950

BY THE PRESIDENT OF THE UNITED STATES
OF AMERICA
A PROCLAMATION

WHEREAS the Armed Forces of the United States serve the Nation with courage and devotion both in war and in peace; and

WHEREAS the Armed Forces, as a unified team, are currently performing, at home and across the seas, tasks vital to the security of the Nation and to the establishment of a durable peace; and

WHEREAS it is fitting and proper that we devote one day each year to paying tribute to the Armed Forces as the servants and protectors of our Nation:

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim that Saturday, May 20, 1950, shall be known as Armed Forces Day; and I invite the Governors of the States, Territories, and possessions to issue proclamations calling for the celebration of that day in such manner as to honor the Armed Forces of the United States and the millions of veterans who have returned to civilian pursuits.

As Commander in Chief of the Armed Forces of the United States, I direct the Secretary of Defense and the Secretaries of the Army, Navy, and Air Force to mark the designated day with appropriate ceremonies, and to cooperate with civil authorities and civic bodies in suitable observances.

I call upon my fellow citizens to display the fiag of the United States at their homes on Armed Forces Day and to participate in exercises expressive of our recognition of the skill, gallantry, and uncompromising devotion to duty characteristic of the Armed Forces in the carrying out of their missions.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed,

DONE at the City of Washington this
27th day of February in the year of
our Lord nineteen hundred and
[SEAL] fifty, and of the Independence
of the United States of America
the one hundred and seventy-fourth.

HARRY S. TRUMAN

By the President:

Dean Acheson, Secretary of State.

[P. R. Doc. 50-1766; Piled, Mar. 1, 1950; 10:21 a. m.]

#### TITLE 19—CUSTOMS DUTIES

Chapter I-Bureau of Customs, Department of the Treasury

[T. D. 52417]

PART 22-DRAWBACK

#### PHILIPPINE TRADE

The President's Proclamation No. 2695, dated July 4, 1946, recognized the independence of the Philippines as a separate and self-governing nation, thus bringing the Philippines within the purview of statutes relating to foreign countries generally and rendering of no force or effect sections 6 and 7 of the act of March 8, 1902 (19 U. S. C. 152a, 152b), which were applicable before the recognition by the United States of the independence of the Philippines.

The following amendment of the Customs Regulations of 1943 is being made to reflect this change;

1. Section 22.1, Customs Regulations of 1943 (19 CFR 22.1), is hereby amended by deleting the words and figures "and section 6 of the act of March 8, 1902," and footnote 2. The parenthetical matter at the end of § 22.1 is amended to read "(Sec. 313, 46 Stat. 693, as amended; 19 U. S. C. 1313)".

 Section 22.31, Customs Regulations of 1943 (19 CFR 22.31), is amended as follows:

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Paragraph (b) and footnote 14 are deleted and paragraph (c) is redesignated (b).

The parenthetical matter at the end of § 22.31 is amended to read "(Sec. 557, 46 Stat. 744, as amended; 19 U. S. C. 1557)".

(Sec. 624, 46 Stat. 759; 19 U. S. C. 1624. Interpret or apply sec. 10, 47 Stat. 768, as amended; 48 U. S. C. 1240. Proc. 2695, 11 P. R. 7517, 3 CFR, 1946 Supp., 60 Stat. 1352; 48 U. S. C. 1240 note)

[SEAL]

FRANK DOW, Commissioner of Customs.

Approved: February 24, 1950.

JOHN S. GRAHAM,
Acting Secretary of the Treasury.

[F. R. Doc. 50-1694; Filed, Mar. 1, 1950; 8:50 a. m.]

### TITLE 26-INTERNAL REVENUE

Chapter I—Bureau of Internal Revenue, Department of the Treasury

Subchapter C—Miscellaneous Excise Taxes
[T. D. 5776]

PART 194-WHOLESALE AND RETAIL DEALERS IN LIQUORS

DELEGATION OF AUTHORITY TO DISTRICT SUPERVISOR AND TO COLLECTOR

1. Paragraph (d) of § 194.44 of Regulations 20 (26 CFR, Part 194) approved June 6, 1940, is hereby revoked and paragraphs (a), (b), and (c) of the same section are hereby amended, as follows:

§ 194.44 Reasonable causes for delinquency. (a) The penalty set forth in § 194.43 will be asserted and collected in every case in which a special tax return is not filed within the calendar month in which the tax liability commenced, unless an extension of time is granted under § 194.42 or a reasonable cause for delinquency is clearly established by the taxpayer. The following, when clearly established, may be accepted by collectors and district supervisors as reasonable causes:

(1) Where the return was mailed in time (whether or not the envelope containing the return had sufficient postage) to reach the collector's office, in normal course of mails, on or before the last day of the month in which the special tax liability commenced. If the due date falls on a non-work day, whether Saturday, Sunday, or some other specified day, a return mailed in time to reach the collector's office before the close of the first work day immediately following the due date shall be considered to have been timely filed.

(2) Where return was filed within the legal period but in the wrong collection district, or directly in the Commissioner's

(3) Where the delay or failure to file was due to erroneous information given the taxpayer by an internal revenue officer or employee.

(4) Where delay was caused by death or serious illness of the taxpayer or by serious illness in his immediate family.

(5) Where the delay was caused by unavoidable absence of the taxpayer.

(6) Where delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

(7) Where the taxpayer, prior to the time for filing return, made timely application to the collector's office for proper blanks and these were not furnished him in sufficient time to permit the executed return to be filed on or before its due date.

(8) Where the taxpayer proves that he personally visited the office of the collector or deputy collector before the expiration of the time within which to file return for the purpose of securing information or aid properly to make out his return, and through no fault of his own was unable to see the representatives

of the Bureau.

(b) Where other grounds are alleged as reasonable causes for delinquency in filing a return on Form 11, a statement in explanation thereof shall be filed by the taxpayer. Where the delinquency is discovered by an officer working under the direction of the district supervisor, and the return on Form 11 is filed by or with such officer, the statement shall be attached to the Form 11 and transmitted to the district supervisor. The reasonableness of other alleged causes will be determined by the district supervisor on the facts submitted. Where the taxpayer files the return on Form 11 directly with the collector, the statements shall be submitted to the collector with the Form 11. The reasonableness of other alleged causes will be determined by the collector on the facts submitted. The policy generally to be followed is that a cause for delinquency which appeals to a man of ordinary prudence and intelligence as a reasonable cause for delay in filing the return and which clearly negatives a willful intent to disobey the taxing statutes, or gross negligence, will be accepted as reasonable. Mere ignorance of the law will not be considered a reasonable cause.

(c) Where grounds other than those listed in paragraph (a) of this section are alleged as reasonable causes, but it is determined by the district supervisor or the collector, as the case might be, that the cause is not one to be considered as reasonable within the provisions of paragraph (b) of this section the penalty shall be asserted, entered on the collector's distilled spirits list, and collected.

2. The purpose of this amendment is to delegate to the district supervisor and to the collector authority to waive, where reasonable causes for delinquency are established, the assertion of delinquency penalties for failure to file a special tax return within the calendar month in which the special tax liability commenced, and to assert and collect such penalties where reasonable causes for delinquency are not established.

3. It is found that compliance with the notice, public rule-making procedure and effective date requirements of the Administrative Procedure Act (5 U. S. C., sec. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the amendment relates basically to agency policy and practice.

 This Treasury decision shall be effective immediately upon its publication in the FEDERAL REGISTER. (53 Stat. 375, 467; 26 U. S. C. 3176, 3791. Interprets or applies 53 Stat. 437; 26 U. S. C. 3612)

[SEAL] GEO. J. SCHOENEMAN, Commissioner of Internal Revenue.

Approved: February 24, 1950.

Thomas J. Lynch,
Acting Secretary of the Treasury.

[F. R. Doc. 50-1695; Filed, Mar. 1, 1950; 8:50 a. m.]

#### TITLE 32-NATIONAL DEFENSE

Chapter IV—Joint Regulations of the Armed Forces

> Subchapter D—Military Renegotiation Regulations (Amdt. 6)

PART 421—AUTHORITY AND ORGANIZATION FOR RENEGOTIATION

PART 422—PROCEDURE FOR RENEGOTIATION
PART 423—DETERMINATION OF RENEGOTIABLE BUSINESS AND COSTS

PART 426-IMPASSE PROCEDURE

PART 427-MILITARY RENEGOTIATION FORMS

PART 428—STATUTES, ORDERS AND DIRECTIVES

MISCELLANEOUS AMENDMENTS AND CORRECTIONS

The following amendments and corrections are made to this subchapter:

PART 421—AUTHORITY AND ORGANIZATION FOR RENEGOTIATION

This part is amended in the following respects:

 Section 421.102-1 is amended by inserting in parentheses after the words "National Military Establishment" the words "now the Department of Defense".

2. Section 421.104-3 is amended to read as follows:

§ 421.104-3 Limitation measured by volume of business. Subsection (b) of the act provides that renegotiation shall not apply to any contractor or subcontractor unless the aggregate of the amounts received or accrued by him during his fiscal year under subject contracts and subcontracts is \$100,000 or more (discussed in § 423.347 of this subchapter).

3. Section 421.109-1 is amended by substituting the words "Department of Defense" for the words "National Military Establishment".

(Sec. 3, 62 Stat. 260. Interpret or apply sec. 508, 56 Stat. 964, as amended, sec. 1, 56 Stat. 1013, 62 Stat. 1027; 26 U. S. C. 2806, 35 U. S. C. 89)

PART 422-PROCEDURE FOR RENEGOTIATION

This part is amended in the following respects:

 Section 422.262-2 is amended by substituting the words "Department of Defense" for the words "National Military Establishment".  Section 422.262-3 is amended by substituting the words "Department of Defense" for the words "National Military Establishment".

(Sec. 3, 62 Stat. 260)

PART 423—DETERMINATION OF RENEGOTIA-BLE BUSINESS AND COSTS

This part is amended in the following respects:

 Section 423.323 is amended to read as follows:

§ 423.323 Segregation and exclusion of exempt contracts. Sales and costs allocable to any contract or portion thereof which is exempt from renegotiation under subsection (i) (1) of the Renegotiation Act of February 25, 1944, as amended, or which is exempted by the Secretary of Defense or his delegatee pursuant to subsection (d) of the Renegotiation Act of 1948, shall be entirely excluded from consideration in determining whether excessive profits have been realized and the amount thereof. (However, see § 423.385-4 for treatment of losses from the sale or exchange of facilities used in performing renegotiable contracts or subcontracts.) Sales under contracts and subcontracts which are individually exempted by the Secretary of a Department under the permissive exemption authority contained in subsection (d) of the act shall be included in applying the \$100,000 limitation or the \$100,000 "floor," (See §§ 423.347-2 (See §§ 423.347-2 and 423,347-3.)

Section 423.350 is amended to read as follows;

§ 423.350 Scope of subpart. The preceding subpart deals with mandatory exemptions and exclusions from the operation of the Renegotiation Act of 1948. The act contains certain provisions authorizing the Secretary of Defense to exempt other contracts and subcontracts from the operation of the act. This subpart will deal with those permissive exemptions. Such exempted contracts are excluded from consideration in determining whether excessive profits have been realized and the amount thereof. Contracts and subcontracts exempted by the Secretary of Defense or by the Policy and Review Board from the provisions of the act by general classes and types are also excluded in applying the \$100,000 limitation or "floor" discussed in §§ 423.-347 to 423,347-4.

(Sec. 3, 62 Stat. 260)

PART 426-IMPASSE PROCEDURE

This part is amended in the following respect:

Paragraph (a) of § 426.621 Statutory provisions is corrected to read as follows:

(a) Subsection (e) of the act provides as follows;

(e) Agreements or orders determining excessive profits shall be final and conclusive in accordance with their terms and except upon a showing of fraud or malfeasance or willful misrepresentation of a material fact shall not be annulled, modified, reopened, or disregarded, except that in the case of orders determining excessive profits the amount of

the excessive profits, if any, may be redetermined by The Tax Court of the United States in the manner prescribed in subsection (e) (1) of the Renegotiation Act of February 25, 1944, as amended, except that such redetermination shall be subject to review to the extent and in the manner provided by subchapter B of Chapter 5 of the Internal Revenue Code.

(Sec. 3, 62 Stat. 260)

PART 427—MILITARY RENEGOTIATION FORMS

This part is amended in the following respects:

1. Section 427.701 is amended to read as follows:

\$ 427.701 Letter of preliminary inquiry. The Military Renegotiation Policy and Review Board may send to contractors and subcontractors a letter of preliminary inquiry requesting either (a) a statement from the contractor or subcontractor that he has received or accrued less than \$100,000 during his fiscal year from contracts and subcontracts subject to the Renegotiation Act of 1948, or (b) data and information which will enable the Board to determine to which of the three Divisions of the Board the case should be assigned. Enclosed with the letter will be copies of Public Law 547, Eightieth Congress, section 3 of which is the Renegotiation Act of 1948; section 401, Public Law 785, Eightieth Congress; section 622, Public Law 434, Eighty-first Congress; section 403 (i) (1) of the Renegotiation Act of February 25, 1944, as amended; Form for Statement by Contractor as to Non-Applicability hereinafter described in § 427.703; and Standard Form of Contractor's Report hereinafter described in § 427.702. This letter of preliminary inquiry, however, does not constitute the beginning of renegotiation proceedings.

The text of the letter is substantially as follows:

OFFICE OF THE SECRETARY OF DEFENSE

MILITARY RENEGOTIATION POLICY AND REVIEW BOARD

WASHINGTON 25, D. C.

LPI No. \_\_\_\_\_Re: Fiscal year ended \_\_\_\_\_

GENTLEMEN: The purpose of this letter is to obtain information which will enable the Military Renegotiation Policy and Review Board to determine whether renegotiation proceedings should be conducted with your

If you had gross receipts or accruals from renegotiable business which aggregated \$100,000 or more in your latest fiscal year, the enclosed "Standard Form of Contractor's Report" must be filed on or before the last day of the fifth month following the close of such year. If your receipts or accruals from renegotiable business were less than \$100,000 for your fiscal year you are not subject to renegotiation for such year. In that event, it is requested that you file the enclosed form entitled "Statement by Contractor as to Non-Applicability of the Benegotiation Act of 1948."

Neither this letter nor your reply will constitute the commencement of renegotiation proceedings. Upon the receipt of the "Standard Form of Contractor's Report" a determination will be made as to which Renegotiation Division should conduct such proceedings. The filing of this Report is in according.

ance with the requirements of paragraph 422.222 of the Military Renegotiation Regulations.

For your convenience and information there are enclosed copies of Public Law 547—80th Congress, which contains the Renegotation Act of 1948; Section 401 of Public Law 785—80th Congress; Section 622 of Public Law 434—81st Congress; Section 403 (1) (1) of the Renegotiation Act of February 25, 1944, as amended; and excerpts from the Military Renegotiation Regulations. Copies of the Military Renegotiation Regulations may be obtained from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C., at a price of \$2.50.

Very truly yours,

Chief, Assignments Section.

Section 427.702 in amended to read as follows:

§ 427.702 Standard Form of Contractor's Report. In accordance with the statutory authority contained in subsections (c), (f) and (h) of the Renegotiation Act of 1948 quoted in § 422.221 of the Military Renegotiation Regulations, the Standard Form of Contractor's Report is prescribed as the form of mandatory statement generally required to be filed by contractors or subcontractors subject to the act.

Filing, in duplicate, of the mandatory statement in satisfactory form on or before the last day of the fifth month following close of the fiscal year is required of contractors and subcontractors subject to the act.

No special form is prescribed for construction contractors, architects and engineers. Such contractors should adapt this "Standard Form of Contractor's Report" to the particular needs of the case.

The content of the form (designated as MRR 702, DD166, 1 Feb. 50) is as follows:

MRR-702—STANDARD FORM OF CONTRACTOR'S REPORT FOR RENEGOTIATION OF CONTRACTS AND SUBCONTRACTS SUBJECT TO THE RENE-GOTIATION ACT OF 1948\*

To: The Military Renegotiation Policy and Review Board, The Pentagon, Washington 25, D. C. From:

Note: If your renegotiable sales during the fiscal year covered by this report were less than \$100,000 (sum of II-A-4 and II-B below), do not use this form; instead, use Statement of Non-Applicability, MRR Form

This form, MRR 702, is to be submitted in duplicate; a single copy of each of the financial statements called for in Item I is sufficient.

See enclosed Instructions (MRR-702-1) for the preparation of this report.

Income or profit and loss statement for the fiscal year...
Statement of surplus for the fiscal year...
Balance sheet as of the close of the fiscal year...

These financial statements appear in either our annual report or audit report, or, as noted

\*Including contracts and subcontracts made subject to such act pursuant to the provisions of section 401 of Public Law 785, 80th Congress and by section 622 (a) of Public Law 434, 81st Congress.

thereon, were prepared from our books for filing with this report. If an annual report or sudit report is not enclosed, we do not

have either of such reports.

II. Our net sales, \*\* etc., during this fiscal year consisted of the following:

A. Subject to renegotiation:

1. Direct sales: Net sales to the Department of Defense (including the Army, Navy and Air Force) under renegotiable prime contracts and purchase orders:

(a) Fixed-price (b) Cost-plus-fixed-fee (total

renegotiable subcontracts of any tier, purchase orders, etc.... 3. Other income subject to re-

renegotiation\_. B. Net sales under renegotiable contracts individually exempted by

renegotiation \_ D. Total net sales, etc., per income statement ...

III. We attach, in duplicate, a full description of the methods we used in segregating our renegotiable sales, etc., listed above under:

II-A-1 Direct sales under renegotiable prime contracts and purchase orders.

II-A-2 Indirect sales under renegotiable subcontracts of any tier, purchase orders, etc. II-A-3 Other income subject to renego-

II-B Sales under renegotiable contracts individually exempted by the respective Secretaries of the Departments of the Army, the Navy and the Air Force.

IV. Listed below are the principal products sold or services rendered entering into renegotiable business for this fiscal year and the functions performed by us with respect to each, such as manufacturing, assembling, distributing, etc.

Product or service	Estimated dollar amount	Function
		1000
		120

V. We estimate that renegotiable sales reported in IJ-A-4 above were divided as fol-

Department of the Army	%
Department of the Navy	%
Department of the Air Force	%
Department of Defense (not	
Included above)	account of

VI. There were | were no | changes in the form or control of our organization, such as reorganization, acquisition, disposal or dissolution of subsidiaries, etc., during this fiscal year. An explanation of any changes is attached.

VII. A statement, in duplicate, is attached showing names and addresses of our parent, subsidiary, controlled and affiliated companies or organizations, if any, with a brief description of the character of their business and the nature and extent of their affiliation: with a designation as to whether or not they had renegotiable business.

We had no affiliated companies at the close our fiscal year.

VIII. At the end of our fiscal year we had: Less than 500 employees [ 500 or more employees [

#### CERTIFICATION

IX. The undersigned certifies that the rep resentations and supporting data herewith submitted are true and correct to the best of his knowledge and belief, subject to such qualifications as are specifically set forth.

> (Exact name of contractor (not abbreviated))

(Mailing address) (Principal officer, partner, (Title)

or proprietor)

(Date of certification of this report)

If a corporation, give: State of incorporation \_\_\_\_\_ Date of incorporation \_

All records, data and information submitted for renegotiation purposes are in the legal custody of the Military Renegotiation Policy and Review Board and are subject to the regulations of that Board concerning access and disclosure. (See MRR Part 422, Subpart F.)

3. Section 427.702-1 is amended to read as follows:

§ 427.702-1 Instructions for preparing the Standard Form of Contractor's Report (MRR 702).

#### GENERAL COMMENTS

An understanding of the Military Renegotiation Regulations issued pursuant to the Renegotiation Act of 1948 is essential to contractors who are required to file the Standard Form of Contractor's Report. A synopsis of methods for identifying contracts and subcontracts subject to the act is enclosed.

The subscription price for the Military Renegotiation Regulations, including amendments thereto and lists of prime contracts containing the Renegotiation Article, printed on sheets punched for a standard loose leaf binder is \$2.50. Subscriptions should be addressed to the Superintendent of Documents, Washington 25, D. C. The Military Renegotiation Policy and Review Board cannot honor requests for this item.

Filing, in duplicate, of the "Standard Form of Contractor's Report" in satisfactory form on or before the last day of the fifth month following the close of the contractor's fiscal year is required of all contractors and subcontractors subject to the Renegotiation Act of 1948. This form is to be submitted in duplicate except for schedules called for in item I, in which case a single copy of each is sufficient.

A contract or subcontract is not subject to renegotiation unless it is for an amount in excess of \$1,000.

A contractor is subject to renegotiation under the Renegotiation Act of 1948 if "the aggregate of the amounts received or accrued" (Sales, etc.) under renegotiable contracts, subcontracts and purchase orders of any tier, in excess of \$1,000 each, "required to contain the Renegotiation Article"—whether or not such article is actually incorporated therein—is \$100,000 or more in a fiscal year.

The aggregate of renegotiable receipts or accruals is the sum of:

(1) Direct sales: Sales under renegotiable prime contracts and purchase orders;
(2) Indirect sales: Sales under renegotiable

subcontracts, purchase orders, etc., (3) Other income subject to renegotia-

(4) Sales under renegotiable contracts individually exempted by the respective Secretaries of the Departments of the Army, the Navy and the Air Force.

If a contractor desires to be renegotiated on a consolidated basis, refer to §§ 422.222-7 and 423.309 of the Military Renegotiation Regulations.

#### INSTRUCTIONS

The following instructions for preparing the Standard Form of Contractor's Report (MRR 702) are arranged in the order of the subject item on that report. If the data space provided on the form is inadequate, additional sheets similarly numbered and captioned should be used.

Item I. (a) A copy of your published annual report, and (b) A copy of audit report by independent

public accountants—preferably the long form report—covering the fiscal year under review should be submitted, if available.

If you do not have an annual report or an audit report by independent public account-ants, or if either of these reports does not include any or all of the financial statements listed in (c), (d) and (e) below, such statements, or any of them not included in one of the aforementioned reports should be prepared from your books and submitted;

(c) Income or profit and loss statement; (d) Statement of surplus;

Balance sheet as of the close of the fiscal year.

The balance sheet should show, in addi-tion to the usual classifications of current assets and current liabilities, the gross plant account and related reserve for depreciation, other major reserves stated as separate amounts and their purposes clearly captioned, and details of the capital accounts.

The income statement should show: gross sales, less discounts, returns and allowances, in accordance with trade or company practice; (2) cost of goods sold, including opening and closing inventories and a classification of manufacturing costs and factory burden; and (3) a classified list of selling and administrative expenses and miscellaneous items.

Item II-A-I. Direct sales to the Department of Defense, including the Departments of the Army, Navy and Air Force, under renegotiable prime contracts and purchase orders.

(a) Fixed price: Sales (less discounts, returns, and allowances) under fixed-price contracts and purchase orders should be

entered on line II-A-1-(a).

(b) Cost-plus-fixed-fee contracts: Total billings (costs, plus fees) on CPFF contracts should be entered on line II-A-1-(b).

Item II-A-2. Indirect sales: Sales (less discounts, returns and allowances) under renegotiable subcontracts of any tier, purchase orders, etc., except those shown in line II-A-3 below, should be entered on line II-Total billings under CPFF subcontracts should also be included in II-A-2.

Item II-A-3. Other income subject to re-

negotiation: Receipts or accruals of income, such as royalties, commissions, management fees, etc., subject to renegotiation, should be

entered on this line.

Item II-A-4. Total sales, etc., subject to renegotiation: Enter the sum of Items II-A-1, 2 and 3 on this line.

Item II-B. Sales under individual permissively exempted contracts pertain only to those made under renegotiable contracts which have been individually exempted by the respective Secretaries of the Departments of the Army, the Navy and the Air Force, pursuant to the provisions of the Renegotiation Act of 1948. Sales (less discounts, returns and allowances) under such contracts should be entered on line II-B.

Item II-C. Sales, etc., not subject to re-negotiation: Sales (less discounts, returns and allowances) not subject to renegotiation should be entered on this line. The enclosed synopsis of methods for identifying

<sup>\*\*</sup>Sales are referred to in the Renegotiation Act of 1948 as "the aggregate of the amounts received or accrued" during a fiscal year.

contracts and subcontracts subject to the Renegotiation Act of 1948 and for segregation of renegotiable and nonrenegotiable sales will be helpful in determining what sales are subject and those not subject to renegotiation.

Item II-D. If your total sales, etc., shown on line II-D are not in agreement with sales as shown in your published income statement or in your audit report, submit a reconciliation of such variation.

Item III. Segregation of sales: A clear and specific description of the principles and methods used in the segregation of renegotiable and non-renegotiable sales is one of the most important aspects of this report.

It will facilitate the completion of your case if, in your explanation of the methods you used in segregating sales, you state whether you utilized the list of prime contracts containing the renegotiation article published from time to time by the Military Renegotiation Policy and Review Board, and whether you inquired of prime contractors regarding subcontracts and purchase orders not specifically identified as renegotiable; also, that only sales applicable to renegotiable contracts in excess of \$1,000 have been included in items II-A-1, 2 and 3. All billings, regardless of amount, during a fiscal year under a renegotiable contract, subcontract, or purchase order must be included in total sales, etc., subject to renegotiation, line II-A-4. For example, if you made a single billing for \$1.00 and 100 billings at \$5.00, under a renegotiable sales under this contract in this fiscal year were \$501.00 and should be so reported.

The value of this report is based largely on your ability to convey accurately the processes you have used to calculate your renegotiable sales. To aid you in your segregation of sales we have enclosed a synopsis of methods for identifying contracts and subcontracts, subject to the Renegotiation Act of 1948.

ject to the Renegotiation Act of 1948.

Items IV through IX. These items are self-explanatory.

 Section 427.703 is amended to read as follows:

§ 427.703 Statement by contractor as to non-applicability of the Renegotiation Act of 1948. If the aggregate receipts or accruals (sales, etc.) subject to the Renegotiation Act of 1948 were \$100,000 or more (sum of amounts includible on lines II-A-4 and II-B of MRR 702) for a fiscal year, the contractor or subcontractor is subject to renegotiation and must file the "Standard Form of Contractor's Report." If the aggregate of renegotiable receipts or accruals (sales, etc.) during such fiscal year was less than \$100,000, the contractor or subcontractor is requested to file the statement of nonapplicability provided below. As a guide in determining whether this statement may be used, reference should be made to the "Standard Form of Contractor's Report" (MRR 702) and the accompanying instructions.

If, after filing this statement of nonapplicability, additional renegotiable receipts or accruals applicable to the same fiscal year are realized in sufficient amount to bring the contractor's or subcontractor's total renegotiable receipts or accruals to \$100,000 or more, the "Standard Form of Contractor's Report" must be filed to replace this statement,

This statement is to be filed in duplicate. To: The Military Renegotiation Policy and Review Board, The Pentagon, Washington 25, D. C.

We acknowledge receipt of copies of the following: (1) Public Law 547, 80th Congress, which contains the Renegotiation Act of 1948, (2) section 401, Public Law 785, 80th Congress, (3) section 622, Public Law 434, 81st Congress and (4) section 403 (1) (1) of the Renegotiation Act of February 25, 1944, as amended.

#### 

5. Section 427.707 is amended to read as follows:

§ 427.707 Letter agreement transmitting interim prepayment of excessive profits prior to close of fiscal year. Interim prepayment of excessive profits are discussed in §§ 424.450 and 424.452 of this subchapter. The following is a letter agreement transmitting interim prepayment of excessive profits prior to the close of a fiscal year:

(Date)

(Cognizant Renegotiation Division)

This prepayment is made on the understanding (1) that such amount shall be deemed to be a payment in elimination of "excessive profits" within the meaning of such term as defined in section 3806 of the Internal Revenue Code; and (2) that such amount will not be included in income in the computation of taxable income for such fiscal year under the Internal Revenue Code and, accordingly, no tax credit is allowable against such amount. The undersigned represents that this payment is not made in satisfaction or discharge, in whole or in part, of any legally binding obligation heretofore existing.

It is agreed that acceptance of this prepayment does not constitute a commencement of renegotiation pursuant to the Renegotiation Act and that, except as provided herein, renegotiation may be conducted in all respects as though this prepayment had not been made. It is further agreed that if renegotiation pursuant to the Renegotiation Act of 1948 shall hereafter be concluded with respect to such fiscal year, (1) the amount of this prepayment will, for the purpose of such renegotiation, be included in renegotiable receipts or accruals, (2) upon such basis, excessive profits, if any, will be determined under the Renegotiation Act and the regulations promulgated thereunder and (3) upon such determination of excessive profits, the prepayment will be applied in elimination of the excessive profits so determined, and, to the extent so applied, this prepayment will be deemed to be "excessive profits determined" within the meaning of the Renegotiation Act. It is intended that, if any amount of excessive profits so determined is less than the amount of this prepayment, or if for any reason renegotiation pursuant to the Renegotiation Act shall not be concluded with respect to such fiscal year, then the excess of the prepayment, or the full amount thereof, as the case may be, shall constitute a payment in elimina-tion of "excessive profits" as such term is defined in section 3806 of the Internal Revenue Code even though not constituting an elimination of "excessive profits determined" within the meaning of the Renegotiation Act of 1948.

It is further agreed that no part of this prepayment shall be refunded to the undersigned, provided, however, that if this prepayment, or a portion thereof, shall be deemed to be "excessive profits determined" within the meaning of the Renegotiation Act of 1948, nothing herein contained shall prejudice any right which the undersigned may have to receive any refund or rebate provided for in the Renegotiation Act with respect to the excessive profits so determined.

If this prepayment is acceptable on the foregoing terms, please so indicate by indorsement of one of the three (3) copies inclosed and return such copy to us.

Yours very truly,

(Exact name of contractor (not abbreviated))

By (Mailing address)
(Principal officer, partner, (Title)
or proprietor)

(Date)

Attest:

(Secretary)

If a corporation, add (corporate seal).

Accepted:

UNITED STATES OF AMERICA,

Chairman of \_\_\_\_\_ Renegotiation Division. Armed Services Renegotiation Board.

(Sec. 3, 62 Stat. 260)

PART 428—STATUTES, ORDERS AND DIRECTIVES

This part is amended in the following respect:

Section 428.801 is amended to read as follows:

§ 428.801 Supplemental National Defense Appropriation Act, 1948; section 3 of which is the Renegotiation Act of 1948.

> [Public Law 547, 80th Congress] [Chapter 333, 2d Session] [H. R. 6226]

AN ACT making supplemental appropriations for the national defense for the fiscal year ending June 30, 1948, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of

America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appro-priated, for the fiscal year ending June 30, 1948, and for other purposes, namely:

#### DEPARTMENT OF THE AIR FORCE

Construction of Aircraft and Related Procurement

For construction, procurement, and modification of aircraft and equipment, spare parts and accessories therefor; electronic and communication equipment, detection and warning systems, and specialized equipment; expansion of public plants, and government owned equipment and installation thereof in public or private plants for the foregoing purposes; and personal services necessary for purposes of this appropriation at the seat of the Government and elsewhere; \$608,100,000 of which \$250,000,000 is for liquidation of obligations incurred under authority granted in the Military Appropriation Act, 1948, to enter into contracts for the foregoing purposes; and, in addition, the Secretary of the Air Force is authorized, until June 30, 1950, to enter into contracts for the foregoing purposes in an amount not to exceed \$1,687, 000,000: Provided, That the unexpended balance of funds appropriated for the fore-going purposes under the head "Air Corps, Army", in the Military Appropriation Act, 1948, shall be consolidated with this appropriation, to be disbursed and accounted for as one fund which shall remain available until expended: Provided, further, That any obligation incurred hereunder shall be subject to the general provisions of the Military Appropriation Act for the fiscal year in which such obligation is incurred.

DEPARTMENT OF THE ARMY-MILITARY FUNCTIONS

CORPS OF ENGINEERS

ENGINEER SERVICE, ARMY

Engineer service: For an additional amount for "Engineer Service," including salaries and expenses of district and division offices, master and advance planning, engineering studies, and engineer activities in overseas areas, \$20,849,000.

Barracks and quarters, Army: For an addi-tional amount for "Barracks and quarters, including expenses incident to the disposition of surplus facilities, \$5,051,000; and in addition \$5,900,000 to be derived by transfer in the amounts indicated from the following fiscal year 1948 appropriations: "Special field exercises." \$2,600,000; "Training and operation, Army Ground Forces," \$300,-000; "Medical and Hospital Department, Army," \$2,000,000; and "Transportation service, Army," \$1,000,000.

> DEPARTMENT OF THE NAVY BUREAU OF AERONAUTICS

Construction of Aircraft and Related Procurement

For new construction and procurement of aircraft and equipment, spare parts and ac-cessories therefor, including expansion of public plants or private plants (not to exceed \$500,000), and government-owned equipment and installation thereof in public or private plants, and for the employment of group IVb personnel in the Bureau of Aeronautics personner in the Bureau of Aeronautics necessary for the purposes of this appropria-tion, to remain available until expended, \$315,000,000, of which \$150,000,000 is for liquidation of obligations incurred under authority heretofore granted to enter into contracts for the foregoing purposes, including not to exceed \$20,000,000 for liquidation of obligations incurred during fiscal year 1945 against appropriation "Aviation, Navy, 1945"; and in addition, the Secretary of the

Navy is authorized, until June 30, 1949, to enter into contracts for the purposes of this appropriation in an amount not to exceed \$588,000,000: Provided, That the unexpended balances of the appropriations of \$310,000,000 and \$90,000,000 which were made available until expended for the foregoing purposes by the Navy Department Appropriation Act, 1947, and the Navy Department Appropriation Act, 1948, respectively, shall be consolidated with this appropriation, to be disbursed and accounted for as one fund: Provided further, That any obligation incurred hereunder shall be subject to the general provisions of the Navy Department Appropriation Act for the fiscal year in which such obligation is incurred.

SEC. 2. The Secretary of Defense shall report to the Committees on Appropriations and Armed Services of the Congress not later than June 30, 1948, and quarterly there-after, the amounts obligated under the contract authorizations provided for in this Act and such reports shall include a statement of finding by the President that the contracts let are necessary in the interests of the national defense and that the contract specifications insure the maximum utilization of improvements in aircraft and equipment consistent with the defense needs of the United

Sec. 3. (a) All contracts in excess of \$1,000 entered into under the authority of this Act, obligating funds appropriated hereby, obligating funds consolidated by this Act with funds appropriated hereby, or entered into through contract authorizations herein granted, and all subcontracts thereunder in excess of \$1,000 shall contain the following

"Renegotiation Article. This contract is subject to the Renegotiation Act of 1948 and the contractor hereby agrees to insert a like article in all contracts or purchase orders to make or furnish any article or to perform all or any part of the work required for the performance of this contract."

(b) Whenever in the opinion of the Secretary of Defense excessive profits are reflected under any contract or contracts or subcontract or subcontracts required to contain the Renegotiation Article prescribed in subsec tion (a), the Secretary is authorized and directed to renegotiate such contracts and subcontracts for the purpose of eliminating excessive profits. He shall endeavor to make an agreement with the contractor or sub-contractor with respect to the amount, if any, of such excessive profits and to their elimination. If no such agreement is reached. the Secretary shall issue an order determining the amount, if any, of such excessive profits, and shall eliminate them by any of the methods set forth in subsection (c) of the Renegotiation Act of February 25, 1944, as amended. In eliminating excessive profits the Secretary shall allow the contractor or subcontractor credit for Federal income and excess profits taxes as provided in Section 3806 of the Internal Revenue Code. The powers hereby conferred upon the Secretary shall be exercised with respect to the aggregate of the amounts received or accrued under all such contracts and subcontracts by the contractor or subcontractor during his fiscal year or upon such other basis as may be mutually agreed upon; except that this section shall not be applicable in the event that the aggregate of the amounts so received or accrued is less than \$100,000 during any fiscal

(c) For the purpose of administering this section the Secretary of Defense shall have the right to audit the books and records of any contractor or subcontractor subject to this section. In the interest of economy and the avoidance of duplication of inspection and audit, the services of the Bureau of Internal Revenue shall, upon request of the Secretary of Defense and with the approval of the Secretary of the Treasury, be made available to the extent determined by the Secretary of the Treasury for the purpose of making examinations and audits under this

(d) The provisions of this section shall not apply to any of the contracts or sub-contracts specified in subsection (1) (1) of the Renegotiation Act of February 25, 1944, as amended, and the Secretary of Defense in his discretion may exempt from the provisions of this section any other contract or subcontract both individually and by gen-

eral classes or types.

(e) Agreements or orders determining excessive profits shall be final and conclusive in accordance with their terms and except upon a showing of fraud or malfeasance or willful misrepresentation of a material fact shall not be annulled, modified, reopened, or disregarded, except that in the case of orders determining excessive profits the amount of the excessive profits, if any, may be redeter-mined by the Tax Court of the United States in the manner prescribed in subsection (e) (1) of the Renegotiation Act of February 25, 1944, as amended, except that such redetermination shall be subject to review to the extent and in the manner provided by subchapter B of chapter 5 of the Internal Rev-

enue Code.

(f) The Secretary of Defense shall promulgate and publish in the FEDERAL REGISTER regulations interpreting and applying this section and prescribing standards and procedures for determining and eliminating excessive profits hereunder using so far as he deems practicable the principles and procedures of the Renegotiation Act of February 25, 1944, as amended, having regard for the different economic conditions existing on or after the effective date of this act from those prevailing during the period 1942 to 1945. In any case in which the contract price of any such contract or subcontract was based upon estimated costs, then the Secretary of Defense shall determine the difference between such estimated costs and actual costs and shall, in eliminating excessive profits, take into consideration as an element the extent to which such difference is the result of the efficiency of the contractor or subcon-

(g) The powers and duties hereby conferred upon the Secretary of Defense may be delegated by him to any officer (military or civilian) or agency of the National Military Establishment.

(h) Any person who willfully fails or refuses to furnish any information, records, or data required of him under this section, or who knowingly furnishes any such information, records, or data containing information which is false or misleading in any material respect, shall, upon conviction thereof, be punished by a fine of not more than \$10,000 or imprisonment for not more than two years, or both,

(i) This section may be cited as the "Re-

negotiation Act of 1948",

Sec. 4. This Act may be cited as the "Supplemental National Defense Appropriation Act, 1948".

Approved May 21, 1948. (Sec. 3, 62 Stat. 260)

Adopted: February 9, 1950.

FRANK L. ROBERTS. Chairman, Military Renegotiation Policy and Review Board.

[F. R. Doc. 50-1732; Filed, Mar. 1, 1950; 9:59 a. m.]

### 1140 TITLE 33—NAVIGATION AND NAVIGABLE WATERS Chapter I-Coast Guard, Department of the Treasury [CGFR-50-1] Subchapter J-Procurement PART 116-PROCEDURES FOR PURCHASING SUBPART 116.01-GENERAL PROVISIONS 116.01-1 Authority. Procurement responsibility. Methods of procurement. Sources of supply.

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AUTHORITY: §§ 116.01-1 to 116.17-10 issued under 62 Stat, 21, 41 U. S. C. Sup. II 151-161.

#### SUBPART 116.01-GENERAL PROVISIONS

§ 116.01-1 Authority. The basic authority for the procurement of supplies and services for the Coast Guard is contained in the Armed Services Procurement Act of 1947, Public Law 413, Eightieth Congress, Second Session, approved 19 February 1948 (41 U. S. C. 151-161), hereinafter referred to as "the act."

§ 116.01-5 Procurement responsibility. The Commandant, having been designated as the "agency head" under the act, is responsible for the procurement policies and activities of the Coast Guard.

\$ 116.01-15 Methods of procurement. Procurement within the Coast Guard shall be made in accordance with the provisions of the act and in compliance with the instructions contained herein. The two principal methods of procurement are by means of formal advertising and by means of negotiation. Procurement shall generally be effected by advertising for bids thereafter awarding a contract to the lowest responsible bidder, Procurement by means of negotiation may be effected, however, when authorized by and conducted in accordance with the detailed requirements and procedures set forth herein. Procurement may also be effected by placing orders with any Government agency or Government owned establishment, or by means of joint or single-department procure-

§ 116.01-20 Sources of supply—(a) Government agencies. To the extent possible, supplies shall be obtained from surplus property in the hands of disposal agencies, or from surplus or excess stocks in the hands of other Government agencies. Whenever practicable, utilization shall be made of available supply facilities of Government agencies.

(b) Sources outside the Government, Irrespective of whether the procurement of supplies or services from sources outalde the Government is to be effected by formal advertising or by negotiation,

competitive proposals ("bids" in the case of procurement by advertising; "quotations" in the case of procurement by negotiation) shall be solicited from such qualified sources of supply or services as are deemed necessary by the contracting officer to assure full and free competition consistent with the procurement of the required supplies or services. In each instance, proposals shall be obtained from the greatest practicable number of qualified sources.

(c) Small business concerns. It shall be the policy of the Coast Guard to place with small business concerns (herein considered to be any concern which employs fewer than 500 persons) a fair proportion of the total procurement of supplies and services. As a means of carrying out this policy, and when not clearly to the disadvantage of the Coast Guard, the supplies or services to be procured shall be procured in reasonably small lots so as to enable and encourage small business concerns to make bids or quotations thereon. Headquarters shall maintain a record of the number and total value of all contracts placed with small business concerns during each fiscal year, and shall prepare an annual report thereon, the information to be obtained in the manner and form prescribed herein. Each contracting office shall, in effecting procurement, obtain necessary information to determine whether or not the supplier is a small business concern. To obtain this information the following clause shall be inserted in the bid or quotation portion of "This orevery invitation for proposals. ganization employs (500 or more) (less than 500) persons. (Strike out inapplicable words.)"

§ 116.01-25 Contracting authority. In accordance with the authority contained in the act, and subject to the limitations set forth herein, designated Coast Guard Contracting Officers are authorized to enter into contracts on behalf of the Government and in the name of the United States of America, by formal advertising, or by negotiation, or by procurement within the Government as hereinafter provided, for supplies and services required for the Coast Guard.

§ 116.01-30 Supplies and services defined. The term "supplies" as used herein means all property except land or interests in land. It includes by way of description and without limitation, materials, supplies, equipment, public works, buildings, facilities, ships, floating equipment, vessels of every character type and description, aircraft, tools, and parts and accessories for such items, and the alteration or installation of any of the foregoing. The term "services" includes by way of description and without limitation, personal or professional services of individuals or organizations; nonpersonal services; educational or training services; architectural or engineering services; maintenance or repair services; transportation; utility services; experimental, developmental, or research work; and construction work.

§ 116.01-35 Contracting officer at Headquarters. At Coast Guard Headquarters, all procurement activities shall be administered by the Supply Division, Office of Finance and Supply. The Chief of the Procurement Section, Supply Division, shall be the contracting officer. In the absence of the Chief of the Procurement Section, the Chief of the Supply Division shall act as contracting officer.

§ 116.01-40 Contracting officers of field units. (a) Subject to the limitations set forth herein, the Commandant hereby delegates authority to procure supplies and services to the following Coast Guard officers:

District Commanders.

The Superintendent of the Coast Guard Academy.

The Commandant of the Coast Guard Yard.

Commanding Officers of Coast Guard Supply Depots.

Commanding Officers of Coast Guard

Training Stations.

Commanding Officers (not officers in

Commanding Officers (not officers in charge) of other Field Units.

(b) The officers listed in paragraph (a) of this section may designate an officer assigned to pay and supply duty as contracting officer.

(c) The delegation of authority to act as "contracting officer" is limited strictly to those officers listed in paragraphs (a) and (b) of this section, and no other officers shall exercise such authority without the prior approval of Headquarters.

§ 116.01-45 Authorized representatives of contracting officers. Contracting officers may designate an officer or civilian official to act as their representative, whenever necessary in connection with the performance of contracts executed by them. Such designation may be made by instructions referring to the particular contractual instrument, or classes of instruments, and may to the extent not specifically prohibited by the terms of the contract involved, empower the representative to take any or all action thereunder which could lawfully be taken by the contracting officer. In no event, however, shall a representative, by virtue of his designation only, be empowered to execute any contract or supplementary agreement. The delegation and designation for such authority shall be contained in a letter signed by the contracting officer and addressed to the contractor, with copies to the officer so designated.

§ 116.01-50 General limitations—(a) Approval of work projects. Headquarters approval of the project or work is required prior to the execution of a contract or the work by a field unit under the following conditions:

 When the proposed contract involves major overhaul of aircraft and/or aircraft engines.

(2) Under the conditions prescribed by current Engineering directives.

(3) A change in or establishment of an aid to navigation.

(4) New construction or Special Fund Projects.

(b) Monetary limitations. Contracts executed by field units shall be limited to the amounts set forth herein, and all contracts in excess of such amounts shall be referred to the Commandant (PS-P)

for execution by Headquarters, or for execution by field units in accordance with specific direction of Headquarters;

(1) Offices of District Commanders, \$10,000 (contracts for repairs to vessels, \$25,000)

(2) Coast Guard Yard, \$10,000.

- (3) Coast Guard Supply Depots, \$10,-
- (4) Aircraft Repair and Supply Base, \$10,000.
  - (5) Coast Guard Academy, \$2,000. (6) Training Stations, \$2,000.
- (7) Receiving Center, Cape May, N. J., \$2,000.

(8) All other Field Units, \$1,000.

- (c) Contract requirements. Contracting officers attached to field units are authorized to execute contracts and effect purchase of supplies and services required for their units subject to the limitations set forth above, and subject to the following requirements:
  - (1) Availability of allotted funds. (2) When the items are not readily
- available from Coast Guard, Navy or other Government sources of supply.
- (3) When the items are not prohibited for the use intended.
- (4) When the items are not in excess of authorized allowances.
- § 116.01-55 Referral to Headquarters. All questions relative to contract procedure and requests to depart from standard contract provisions shall be referred to the Commandant (FS-P).
- § 116.01-60 Commercial procurement by vessels and stations. Commercial procurement of supplies and services by vessels and stations shall be confined to the following:
- (a) Procurement under existing con-
- (b) When time will not permit the referral of the purchase requirement to a District Office or a Supply Depot.
- § 116.01-65 Government sources of supply. (a) It is the policy of the Coast Guard to procure supplies and services from the following sources whenever available:

(1) Within the command

- (2) Coast Guard Supply Depots, and Supply activities.
  - (3) Bureau of Federal Supply.
  - (4) Navy Department.
- (5) Other Government Agency Supply Units.
- (6) Existing Coast Guard contracts. (7) Bureau of Federal Supply con-
- tracts. (8) Other- Government Agency con-
- tracts. (b) When the required items are available from such sources, procurement is mandatory from such source unless some interest of the Government is served by commercial procurement.
- § 116.01-70 Defaulting contractors. When a contractor fails, or it becomes apparent that he will fail, to perform the terms and conditions of a contract, a complete report of all circumstances, including the contract number and the recommendations of the contracting officer, shall be forwarded to the Commandant (FS-P) for determination of the action to be taken. If Headquarters determines that the contract should be ter-

minated for default, any supplies or services still required after such termination may be purchased against the contractor's account, in the open market or otherwise.

§ 116.01-75 Conduct of procurement personnel. In accordance with certain restrictions imposed on Government officers and agents by applicable sections of the Criminal Code (especially 18 U. S. Code 93, 198, 202, and 203), and in ac-cordance with the general policy against conflicting private interests of Government officers and employees, every person charged with the administration and expenditure of Government funds must refrain from such conduct as would interfere with the full, proper and impartial discharge of his official duties, or as would give rise to a reasonable suspicion that his conduct was motivated by self interest rather than by the best interests of the Government.

§ 116.01-80 Mandatory sources supply-(a) General. Certain supplies and services must be obtained from the sources designated in this article. "Federal Supply Schedule Index (including Index to the Stock Catalog and Other Government Sources of Supply)" shall be maintained in each district office, independent unit, and other units to which a supply officer is regularly assigned. Copies will be obtained in the manner prescribed in subparagraph (1) (ii) and (iii) of this paragraph.

(1) Bureau of Federal Supply contracts. (i) Pursuant to 41 U.S. C. 7a, the supplies and services listed below, when not available from Government sources, shall be procured only under Bureau of Federal Supply contracts, except when required for immediate use and the time of delivery specified in the contract will not meet the actual necessity of the service. In such cases, procurement from other sources may be made of such quantity as may be immediately required. A statement of the necessity for such action will be made on the public voucher. A wide range of items fall within the class listings below which are furnished as a guide only. Specific items, descriptions and prices are listed in Federal Supply Schedules.

Caps, blasting; dynamite; plugs, blasting; powder, blasting; primer and booster charges.

7,14 Gasoline, fuel oil and kerosene when included in Federal Supply Schedules and bulletins; provided they are not included in Navy contract.

8 Motor vehicle accessories and parts. Tires and tubes. Tire chains.

- Lamps, electric and photographic flash. Office furniture, steel and wood, in-cluding chairs, lockers, filing sections, desks, tables, etc.
- Household and quarters furniture.
- Floor and window coverings.

Books.

- Machines, floor polishing and scrub-140 bing, cylindrical type, electric, with accessories.
- 40 Machine tools, small machinery and accessories.

When available from Federal Prison Industries, Inc., clearance is required prior to effecting purchase under Bureau of Federal Class

40 Pads, floor polishing and scrubbing machine, steel wool, disk type.

Binders, loose leaf.

- Cups, drinking, paper.
- Office equipment; purchase, rental, repair, and maintenance.

Airplane tires and tubes.

- Recording and transcription service except instantaneous recordings.
- (ii) Necessary files of current Federal Supply Schedules (all mandatory classes and other classes as selected by the unit concerned) shall be maintained at each district office, independent unit, and other units to which a supply officer is regularly assigned. Requests for schedules and price lists shall be submitted on Bureau of Federal Supply Forms T. P. 348 and T. P. 348A by district offices and independent units direct to the Editorial Section, Bureau of Federal Supply, Treasury Department, Seventh and D Streets SW., Washington 25, D. C. with a copy to the Commandant (FS-P). The required forms may be obtained direct from the Bureau of Federal Supply or its regional warehouses

(iii) Subordinate units of a district shall request schedules and price lists

from the district office

(2) Bureau of Federal Supply warehouses. (i) Certain supplies when not available from Coast Guard or Navy sources shall be procured from Bureau of Federal Supply regional warehouses. Warehouses are located at Washington, D. C., Boston, Mass., New York, N. Y., Cleveland, Ohio, Chicago, Ill., Atlanta, Ga., Fort Worth, Tex., Kansas City, Mo., Denver, Colo., San Francisco, Calif., and Seattle, Wash.

(ii) Supplies carried in stock are listed in the Bureau of Federal Supply Stock Catalog. Copy of this publication shall be maintained at each district office, independent unit, and other units to which a supply officer is regularly assigned. Copies will be obtained in the manner prescribed in subparagraphs (1)

(ii) and (iii).

(iii) Requisitions shall be submitted to the nearest regional warehouse on original and one copy of Form CG-2557. containing the following information:

Shipping address.

Method of delivery, 1. e., commercial ship-ment, "pick-up," "deliver to bearer," etc. Address of office to be billed.

Appropriation, subhead and limitation to

be charged with cost of supplies. Appropriation, subhead and limitation to

be charged with cost of transportation.
The statement "Bill by 991 voucher." (See Chapter I, Accounting Manual.)

(iv) All requisitions prepared by units of a district should be routed through the district office to permit review and utilization of Coast Guard facilities in effecting delivery.

(3) Federal Prison Industries, Inc. (i) Under the provisions of Public Law 271 (46 Stat. 392) (18 U. S. C. 744g), certain supplies and services must be procured from the Federal Prison Industries, Inc., or a clearance obtained. before they can be procured from commercial sources. The General Accounting Office will disallow all payments unless clearance has been granted in advance of purchase from commercial

sources. A wide range of items fall within the class listings below which are furnished as a guide only. Specific items, descriptions and prices are listed in the publication "Schedule of Products Made in Federal Penal and Correctional Institutions," copies of which may be obtained by letter request to the Commandant (FS-P). Copies of the schedules shall be maintained at each district office, indepedent unit, and other units to which a supply officer is regularly assigned.

> Class Item Boats; wooden, less than 70 feet long, for delivery west of the Mississippi River.

Brooms; corn.

29, 38 Brushes; various types, Brushes, polishing and scrub-40 bing machines.

Cargo nets.

All classes castings; gray iron, various types. Canvas goods; various articles,

Cotton textiles:

Cloth; awning. Duck: cotton.

Drills.

Ticking, mattress and pillow. Dry cleaning service (dry cleaning service required by units within 100 miles of the U.S. Penitentiary, Alcatraz, Calif.).

Furniture:

Fiber; various articles. Wood; various articles. 26

26, 54, 57, 63 Furniture and specialties; metal, various articles. Gloves and mittens; various

types.

Handles; striking tool.

Laboratory animals. 68 Laundry services.

Mattresses; cotton feit, Paper weights; gray iron, 27 Paper

leather covered. Printing (see article 1041, Pay and Supply Instructions). Shoes; various types.

37, 72

Steel storage shelving; all types.

(ii) Requests for clearances shall be forwarded to the Commandant (FS-P) together with a detailed statement as to the necessity for procurement from commercial sources.

(iii) Clearance C-27650 authorizes purchase from commercial sources when (a) immediate delivery or performance is required by public exigency which will not admit of delay in procurement, and (b) suitable second-hand property can be procured. Purchases covered by this clearance will make reference to the applicable clearance on the pertinent public voucher.

(iv) When procurement has been made in the open market under the authority of a clearance, the original or a copy of the applicable specific clearance will accompany the public voucher to which it pertains. When more than one public voucher is issued for items covered by one clearance, subsequent public vouchers will bear reference to the public voucher with which the clearance was

(4) Purchase of blind-made products. (i) Under the requirements of Public Law 739 (52 Stat. 1196), 41 U.S. C. 48), the supplies listed below shall be procured through the Committee on Purchase of Blind-made Products when not available from Government sources:

Bags, mailing, cotton. Brooms:

38 Corn.

Fiber.

Whisk

Brushes, whisk. Covers:

Ironing board.

Bed pan. Ice cap.

38 Handles; mop, spring lever type.

Mats: 27 Cocoa fiber.

Rubber link.

Rubberized fabric.

Rubber tire strip. Mattresses:

Cotton (felted).

Inner spring, Mops, Cotton:

38 Cuspidor.

Floor, oll treated.

Floor, wet mopping. Wall and ceiling types.

Pads: froning board.

Panels, cotton, screen. Pillow cases, cotton.

Rugs; cotton.

Swabs: 38 Deck.

38 Hand.

Towels:

27 Huck.

27 Dental. Barbers,

(ii) Purchase orders shall be placed under the provisions of the "Regulations prescribed by the Committee on Purchases of Blind-made Products," as contained in the publication "Schedule of Blind-made Products." Copies of this publication shall be maintained at each district office, independent unit, and other units to which a supply officer is regularly assigned. Copies will be obtained in the manner prescribed in subparagraphs (1) (i), (ii) and (iii) of this

(iii) Detailed descriptions and prices of the articles listed are shown in the publication "Schedule of Blind-made

Products.

(iv) The Committee on Purchases of Blind-made Products clearance dated March 27, 1942, effective on that date and continuing until rescinded, grants authority to make purchases of supplies listed in the Schedule of Blind-made Products from commercial sources when military necessity may require delivery within a period of 2 weeks, or when the cost of the item or items is not in excess of \$25.

(v) When an item is obtained from commercial sources under authority of a clearance, reference to the applicable clearance shall be made on the payment

(5) Post Office Department. lopes shall be purchased only under contracts executed by the Post Office Department. A publication "Award of Contracts for Envelopes" is issued periodically and lists all available types of envelopes, as well as necessary contract information. Copies of this contract bulletin are available through Headquarters. Orders placed for envelopes shall be forwarded direct to the contractor and need not be forwarded via Headquarters.

(6) The foregoing restrictions apply only to commercial purchases and do not prevent procurement from Government

sources of supply.

(7) Surplus property. The Surplus Property Act of 1944 (Public Law 457, 78th Cong.), as amended, places the responsibility upon all Government agencies in order to avoid making purchases through commercial sources when suitable items are available from surplus property, to consult continuously the records of surplus property maintained by the authorized disposal agencies, and to determine whether their requirements can be satisfied out of such surpluses.

SUBPART 116.03-METHODS OF PURCHASE

§ 116.03-1 General. (a) Three methods of commercial purchase by Coast Guard units are authorized:

(1) Purchases made under existing

contracts.

(2) Purchases made by advertising.

(3) Purchases made by negotiation.
(b) Purchases made from Coast Guard and other Service sources of supply, generally consummated by the submission of requisitions, are covered by Chapter X, Pay and Supply Instructions.

§ 116.03-5 Purchase orders. (a) Form CG-2557, Purchase Order, shall generally be used for commercial purchases.

(b) Under such instructions as may be prescribed by District Commanders or commanding officers of independent units, Form CG-2974 (Purchase Invoice) may be used as a purchase order by persons in charge of vehicles, aircraft and small boats while (1) on detached duty, (2) en route to new stations, and (3) in emergencies during normal operations. The instructions contained on the cover sheets of Form CG-2974 shall be strictly complied with.

§ 116.03-10 Class of purchase orders, (a) There are two classes of purchase

(1) When the article is covered by an existing contract and the purchase order is, in fact, a request for delivery. In this case the purchase order cites reference to the existing contract and no additional conditions can be imposed.

(2) When the order is placed as the result of a negotiated purchase and the purchase order is, in fact, the contractual agreement. In this case the conditions under which the purchase is made and delivery will be accepted shall be incorporated in the order.

(b) A purchase order shall be used to cover every purchase, including confirmation of orders placed by telephone or telegraph and requests for delivery under term or specific contracts.

(c) A separate purchase order shall be issued for each purchase under a term contract, except in those cases where day to day deliveries are required.

Example (in the case of ice): 100 lbs. daily for the month of July 1948.

(d) Purchase orders covering repairs to vessels under term contracts shall clearly specify the work to be performed and the applicable contract prices that will be paid. The date for the commencement and completion of the work shall be stated in the purchase order.

§ 116.03-15 Preparation of purchase orders (Form CG-2557). (a) Purchase orders shall be prepared in a sufficient number of copies to serve the administrative requirements of the purchasing unit.

(b) All applicable data required by the format of the purchase order blank

shall be inserted.

(c) The original purchase order, autographically signed by the ordering officer, shall be forwarded or delivered to the supplier.

(d) The block in the lower left-hand corner of the purchase order may be utilized for the following purposes:

(1) On the original. Acknowledgment of the order by the supplier, using wording similar to the following:

Acknowledge receipt and acceptance of this order by signing and returning the "Contractor's Acceptance Copy" to the ordering office.

(2) Contractor's acceptance copy. When seller's acceptance of the purchase order is required, the contractor shall be furnished with an extra copy of the order and shall be requested to indicate acceptance by means of the following wording placed on that copy:

Acceptance of this order, subject to the conditions as stated, is hereby acknowledged.

Signature \_\_\_\_\_

(3) A contractor's acceptance shall always be required in connection with any contract or purchase involving liquidated damages.

(4) A contractor's acceptance shall always be required in connection with repairs to vessels under a term contract.

(5) Receiving unit's copy. Two coples of the purchase order shall be forwarded to each consignee. This includes the units to which the items are shipped and also the units for which the items are ultimately intended. Each consignee shall be requested to indicate receipt of the items by executing the following certificate placed on the receiving unit's copy and returning the copy to the purchasing office:

Received this date, the above described articles in good condition, and in the quantities indicated.

Signature \_\_\_\_\_

§ 116.03-20 Numbering of purchase orders (Form CG-2557). (a) Purchase orders shall be serially numbered, in numerical sequence, beginning a new series each fiscal year.

(b) To permit unit identification of purchase orders, each order number shall be prefixed by the allotment symbol number of shore units, and by the class and number of vessels placing purchase orders.

EXAMPLES 01-33-48 would indicate

1st CG District	Serial No.	Fiscal year
eı	233	48

EXAMPLES—Continued WPG31-33-48 would indicate

-	Cutter BIBB	Serial No.	Fiscal year
	WPG31	33	48

(c) Additional numbers or symbols may be suffixed at the discretion of the ordering office for internal administrative control.

§ 116.03-25 Purchase orders covering replacement of equipment exchanged or sold. (a) Purchase orders covering replacement equipment for which exchange allowance of old equipment has been authorized and agreed upon shall list the replacement item at gross contract or purchase price, and indicate credit against such gross cost by identification of type, make, size, serial number, etc., and exchange allowance of old equipment. The net amount will be shown on the purchase order after deduction of exchange allowance from contract or purchase price, after which allowed discounts shall be applied to reflect net cost of replacement equipment.

(b) Purchase orders covering replacement of equipment which has been sold in accordance with subpart 116.09 will be prepared in the usual manner to show contract or purchase price of replacement equipment and applicable discounts. In the body of the purchase order following description of replacement equipment, will be inserted reference to certificate of deposit number on which proceeds of sale of old equipment were deposited, together with identification of type, make, size, serial number, etc., and sale price of old equipment, proceeds of which are to be applied against purchase price of replacement equipment.

\$ 116.03-30 Coding of purchase orders, contracts, and vouchers. (a) Under the provisions of the act, as implemented by instructions issued by the President, Headquarters is required to assemble information pertaining to (1) all procurement from small business concerns, and (2) procurement under each of the several circumstances authorizing negotiation. In order to obtain the information at Headquarters, appropriate code symbols have been prescribed as listed below for use on all purchase orders, contracts, contract bulletins, and public vouchers pertaining to procurement:

(1) Sources of procurement:	symbo	
(i) Purchases made under Coast Guard contracts or purchase agreements from concerns em-		
ploying less than 500 persons (ii) Purchases made under Coast	SBC	1
Guard contracts or purchase agreements from concerns em- ploying 500 or more persons (iii) Purchases made under con-	SBC	2
tracts of other Government agencies (including Navy and Bureau of Federal Supply con-	SBC	9
Bureau of Federal Supply con- tracts)	SBC	600

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(2) Circumstances governing pro-

Code

symbols

(b) Every contract or purchase order issued to a commercial supplier shall bear the applicable code symbols (1) as to Sources of Procurement and (2) Circumstances Governing Procurement, as listed above, in order that the information will be available at the time the public voucher is prepared. The code symbols shall be inserted near the upper right hand corner of the purchase document. When contract bulletins are issued by contracting offices, the applicable code symbols pertaining to each contract shall be shown for the information of all ordering offices.

(iii) Purchases made under Bu-

(iv) Purchases made under con-

tracts\_\_\_

reau of Federal Supply Con-

tracts of other Government

CG 51

(c) In the preparation of public vouchers (Standard Form 1034) relating to commercial procurement, the code symbols shall be inserted at the lower edge of space (14) on the voucher. The code symbols shall also be inserted in the same relative space on Advertising Vouchers (Standard Form 1144).

#### SUBPART 116.05-PROCUREMENT BY ADVERTISING

#### GENERAL.

§ 116.05-1 Advertising. The term "advertising" as used in this subpart means that method of procurement which follows the formal procedures prescribed herein with respect to competitive bids and awards, and which involves the use of standard forms for invitations for bids, instructions to bidders, and requires submission of sealed bids and the holding of public opening of bids.

§ 116.05-2 Use of advertising. In accordance with the basic policies set forth in the act, procurement of supplies and services shall generally be effected by advertising. Bids shall be solicited from such sources as are deemed necessary by the contracting officer to assure full and free competition consistent with the procurement of the required supplies or

§ 116.05-3 General requirements for advertising. No contract shall be entered into as a result of advertising unless and until all of the following requirements have been satisfied:

(a) Bids have been solicited as pre-

scribed herein;

(b) Bids have been submitted in accordance with the requirements herein;

(c) Award has been made to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered.

§ 116.05-4 Method of advertising. Advertising is to be interpreted as giving all interested parties an opportunity to submit a bid for the required supplies or services, so as to secure for the Government the benefits of competition, and to prevent opportunities for collusion or fraud. Advertising is generally accomplished by sending notices of the requirement (Invitations for Bids) to firms in a position to bid on such requirements and posting a copy of such notice in a public place, such as on a post office public bulletin board.

\$ 116.05-5 Headquarters' authority to purchase does not waive advertising requirement. An authorization by Headquarters for a unit to incur a recommended expense or to undertake a specific project, does not waive the requirements to obtain competition.

§ 116.05-6 Unnecessary solicitation of bids discouraged. Contracting officers should avoid sending out invitations for bids or requests for quotations when not reasonably certain that an award will be

§ 116.05-7 Sufficient time to be allowed for submission of bids. Invitations for bids shall allow sufficient time for interested bidders to prepare and submit their bids. Under normal circumstances an interval of 10 days should be allowed for such submission.

§ 116.05-8 Bids to be restricted to manujacturers and regular dealers.
Only individuals or companies that can show that they are manufacturers of or regular dealers in the article which they

offer to supply may be permitted to bid. A regular dealer is considered to mean one who is regularly engaged in the business of buying and selling the required item to the general public and not merely to a Government department. A dealer who keeps on hand an adequate stock of the material bid on or controls a dependable source of supply of that material is considered a regular dealer. However, a dealer may be a regular dealer in one commodity and yet not a regular dealer for other items; i. e., a dealer in dairy products is not necessarily a regular dealer in fuels.

§ 116.05-9 Bids to be solicited from at least three dealers. Bids shall be so-licited from at least three responsible dealers when practicable to do so. A copy of the invitation, describing in detail the proposed purchase, shall be posted in a public place inviting a general participation in the competition.

§ 116.05-10 Advertising not limited to solicitation from three dealers. The mere solicitation of bids from three or more dealers does not necessarily mean that the intent of the Act has been complied with, as it is possible for competition to be defeated if the grouping of diverse items on the same invitation is such that a limited number of blds are received for each item.

§ 116,05-11 Invitation sent to one dealer not sufficient advertising. An invitation sent to one dealer and notice posted in one public place does not constitute sufficient advertising for supplies or services in the absence of facts showing conditions which limited the distri-

§ 116.05-12 Solicitation not restricted to immediate locality. The solicitation of bids is not restricted to the immediate locality. If, after considering time and cost of transportation, a more advantageous price may be obtained elsewhere. invitations should be distributed accordingly. Invitations should be posted and circularized not only at the place of solicitation, but also at the site of the proposed work.

§ 116.05-13 Competition not waived in case of patented articles. The fact that an article is patented, copyrighted or exclusively made or distributed by a limited number of dealers is not an acceptable reason for omitting advertising. The absence of competition must be conclusively established by soliciting bids.

§ 116.05-14 Lack of competition must be established. The fact that there is no competition shall, if practicable, be established conclusively by the actual solicitation of bids and the posting of notice in public places, and not based on an assumption.

§ 116.05-15 Competition not to be dispensed with to match equipment. A desire to match equipment on hand does not warrant purchase without competition, inasmuch as numerous firms may be in a position to furnish the required item or a satisfactory substitute.

§ 116.05-16 Paid advertisements require Headquarters' approval. No paid

advertisement for an invitation for bids shall be inserted in any newspaper or periodical without the prior approval of Headquarters. This prohibition does not, however, prevent the releases of notices of invitations for bids, bid openings, or contract awards which are treated as news items and which may be published without expense to the Government.

§ 116.05-17 Readvertisements to be avoided. Readvertisements, or a suplementary opening of bids shall be avoided in view of the fact that bids and prices of the original opening have been disclosed to interested competing

#### FORMS TO BE USED IN SOLICITING BIDS

§ 116.05-20 Short form contracts. When bids are solicited for supplies or services for amounts of less than \$5,000 and not requiring bonds, or for minor construction and repair work of less than \$2,000 without bonds, Standard Form 33 (Invitation, Bid and Acceptance) will be used.

§ 116.05-21 Formal supply contracts. When bids are solicited for supplies or services for amounts of \$5,000 or more, or requiring bonds, Standard Form 30 (Invitation for Bids-Supply Contracts) will be used.

§ 116.05-22 Formal construction and repair contracts. When bids are solicited for construction and repairs to vessels, shore structures, aircraft and aids to navigation for amounts of \$2,000 or more, or requiring bonds, Standard Form 20 (Invitation for Bids-Construction) will be used.

§ 116.05-23 Telephone service. See Chapter XV, Pay and Supply Instructions.

§ 116.05-24 Lease of real property. Bids for the acquisition of land, buildings, etc., will be solicited on Standard Form 33. (See Subpart 116.13.)

§ 116.05-25 Contract conditions. (a) Invitations for bids shall prescribe the conditions under which bids will be considered and which will subsequently form part of the contract. The appli-cable conditions shall form part of the schedule or be incorporated by appropriate reference.

(b) The following forms are available for the purpose:

CG-2557-A Purchase Conditions. CG-2557-B Conditions Applicable to Contracts for Repairs to Vessels.

Conditions Applicable to Contracts for Construction and/or Repairs to Shore Structures.

(c) When the conditions are made a part of the invitation by accompanying papers, they shall be referred to in a manner substantially as follows:

(1) Subject to the conditions of Form CG-2557-A, attached hereto and forming part of this invitation.

(2) Subject to the conditions of articles of Form CG-2557-A, attached hereto and forming part of this invitation.

§ 116.05-26 Instructions to bidders. A copy of the standard Government instructions to bidders shall be furnished the bidder upon request. The following forms are available:

Standard Form No. 22 Instructions to Bidders (Construction and Supplies). Standard Form No. 42 Instructions to Bidders (Coal).

§ 116.05-27 Bid forms. The standard Invitation for Bid forms prescribed by these instructions fixes the form in which bids will be received. The prescribed bid form may be forwarded with the invitation or furnished upon request of the

§ 116.05-28 Contract forms. The standard bid forms prescribed by these instructions indicate the contract forms which the successful bidder will be required to execute. Contract conditions may be incorporated in the Invitation for Bids in a manner substantially as fol-

Subject to the conditions of Standard orm ---- which the successful bidder will Form be required to execute. Copy will be furnished for information upon request.

#### PREPARATION OF INVITATION FOR BIDS

§ 116.05-30 Preparation of invitation for bids. (a) (1) Care shall be exercised in the preparation of invitations for bids and contracts so as to incorporate all of the requirements into the invitation or related papers in such manner as to permit an intelligent submission of bids by interested parties. All pertinent factors shall be clearly stated, including specifications, delivery requirements (packing, marking, points of delivery, time of delivery, etc.), quantities, units of measurement, inspection details, and all other elements which may be reflected in the cost of the item. However, care must be exercised not to include citation to any law which is not applicable as such citation may tend to result in higher blds.

(2) Invitations for bids which will involve construction contracts executed on Standard Form 23 shall be accompanied by a copy of such form with all applicable conditions, and shall contain a statement

as follows:

The successful bidder will be required to execute a formal contract on Standard Form 23, a copy of which is inclosed herewith for information.

In such cases two copies of the invitation for bid and two copies of the proposed contract, complete with plans and specifications, shall be forwarded to the Commandant (FS-P) at the time of submission of the invitation for bid.

(b) The retained official file copy of each invitation for bids shall be autographically signed by the officer soliciting the bids. It is not necessary to sign all copies of the invitations sent to dealers, provided the name of the soliciting officer is stamped or typewritten on such copies. The original copy sent to dealers may be signed to indicate the authen-

ticity of the invitation.

(c) The time for the opening of bids shall be fixed at a date sufficiently after the date of solicitation so as to secure adequate competition and to allow bidders to prepare and return their bids, having due regard for the importance of the purchase and the urgency of the need. For normal, routine purchases, a period of 10 days shall be considered sufficient. The invitation shall clearly state the time and date for such open-ing. The terms "immediately," "as ing. The terms "immediately," "as soon as possible," "at once," etc., are indefinite and shall not be used.

#### RECEIPT AND OPENING OF BIDS

§ 116.05-35 What constitutes a bid. The submission of a bid on Standard Forms 21, 31, or 33, or a letter embodying the specifications and conditions, signed by the bidder, constitutes a bid in connection with procurement by advertising.

§ 116.05-36 Public opening of bids mandatory. (a) Whenever bids have been solicited, the parties responding to such solicitations shall be duly notified of the time and place of opening of the bids, and be permitted to be present either in person or by attorney, and a record of each bid shall then and there be made.

(b) All bids must be opened in public, by or in the presence of an officer or civilian administrative assistant designated by the contracting officer.

§ 116.05-37 Bids to be opened at the appointed time. Bids shall not be opened in advance of the appointed time, which shall be stated on the invitation for bids.

§ 116.05-38 Premature information forbidden. No information relating to competitive projects which might affect competition shall be disclosed to anyone until the bids are publicly opened.

§ 116.05-39 All bids to be preserved and recorded. A copy of each bid received shall be preserved and recorded and retained in the permanent files of the contracting office.

§ 116.05-40 Failure of bidder to sign bid papers. When a bidder falls to sign his bid and the bid is accompanied by a letter proposal properly signed, his bld is entitled to the same consideration as a properly signed bid.

§ 116.05-41 Withdrawal of bids prior to opening. Bids may be withdrawn at any time prior to the opening of the bids.

§ 116.05-42 Withdrawal of bids prohibited after opening. (a) Except as limited by an option, a bid cannot after an opening be withdrawn before a reasonably sufficient time has elapsed for the proper examination of all bids received.

(b) In the case of bids submitted under a guaranty the bidder, if he attempts a withdrawal or an evasion after award, is held by the bond of agreement to execute a contract. Where no guaranty is required with the bid the bidder cannot be forced to execute a contract, recourse being to purchase against his account and collect the excess cost. Headquarters approval shall be requested prior to making a purchase against a contractor's account in the event of default.

§ 116.05-43 Late bids received by mail. Bids received in the mails after the hour of opening, which show by their respective postmarks that they were not mailed in proper time or manner to have been received by the specified hour of opening shall not be opened, but shall be returned to the bidder with a letter

stating the time and place of mailing as shown by the postmark. When necessary to open the envelope to ascertain the name and address of the bidder, or to obtain any other identifying information, the circumstances of the opening shall be stated in the letter to the bidder.

§ 116.05-44 Bids delayed in the mail. (a) Bids received after the hour fixed for the opening due to delays in the mail, but before award is made, will be considered provided the envelope containing the bid bears evidence of its mailing in time for arrival before the hour of open-The following will be accepted as satisfactory evidence of its mailing in time for arrival before the hour of opening:

(1) When the envelope containing the bid bears a post office cancellation mark showing clearly that the bid was mailed in proper time and manner to have been received in the ordinary course of mail before the time fixed for the opening of

bids.

(2) When the envelope containing the bid bears a metering device indicium and (i) the indicium includes the hour in addition to the city, state, and date, the indicium will be given the same recognition as a post office postmark and the rule in subparagraph (1) of this paragraph applies; or (ii) the date only is shown in the indicium, and that date is such that the bid if mailed as late as the last hour of that day, would have arrived in the normal course of the mail at or before the time stated for the opening of the bid; or (iii) the date only is shown in the indicium, and that date is such that the bid if mailed at some hour before the end of that day, would have arrived in the normal course of the mail at or before the time set for the opening, provided that before any award is made to the bidder concerned, an affidavit secured from him setting forth the actual hour of mailing shows that the bid was mailed on or before the hour which would have permitted the bid to have been received in the ordinary course of the mail at or before the time of opening of bids.

(b) Evidence of an attempt on the part of the bidder to secure an advantage in the late mailing of a bid will be reported to Headquarters. Frequency of late bids by the same bidder may be prima facle evidence requiring investigation.

(c) All bids received in the mails after the time fixed for the opening shall be entered in the permanent record showing for each the time and place of mailing as indicated by the postmark. The witnessing officer shall initial the entry for each bid which, having been mailed in time, must be considered in deciding the awards. The envelopes for those particular bids shall be retained for at least one month after the opening of bids, available for inspection by bidders.

§ 116.05-45 Late bids presented by hand. A bid presented by hand after time of opening specified in the advertisement is a late bid and shall not be

§ 116.05-46 Telephonic bids. Telephonic bids may be solicited in cases of emergency. An adequate number of bona fide bids must be obtained, and all the procedure must harmonize as nearly as possible with the regular purchase procedure.

§ 116.05-47 Telegraphic bids. When bids are requested by purchasing officers to be submitted by telegram, the request for such bids will be worded as follows: "Telegraphic bids requested, to be received in (office concerned) by (hour and date fixed.)"

§ 116.05-48 Bid improperly identified. No responsibility will be attached to an officer for the premature opening of a bid not properly addressed and identified.

§ 116.05-49 Recording of bids. (a) The names of the bidders and the prices bid shall be recorded in a permanent record of the purchase transaction. When the items are too numerous to warrant recording of bids completely as in the case of periodical provisions contracts, an entry shall be made of the opening date, general description of the material, and the total number of bids received.

(b) The permanent record and the bids will be available for public inspection.

(c) The original bids shall not be allowed to pass out of the hands of an official of the Government, except when the duplicate cannot be made available for public inspection and then only under the immediate supervision of an official of the Government under conditions which preclude the possibility of a substitution, addition, deletion, or alteration in the bid.

(d) When bids are received they will be placed under lock and key where they will remain until advertised time of opening, when they will be removed and opened concurrently and publicly under the supervision of an officer or civilian administrative assistant. All bids will be read aloud in the presence of bidders, press representatives, and representatives of bonding companies, and immediately recorded. After bids have been read and recorded, copies may be examined by all interested parties.

#### ACCEPTANCE OF BIDS

§ 116.05-55 Award to the lowest bidder. The lowest eligible bidder offering to furnish the required supplies or services in accordance with the requirements is entitled to the award, in the absence of specific laws and regulations to the contrary.

§ 116.05-56 Where time is a controlling element. Where time is a controlling element, the bid must clearly show the time required for performance, and must include a liquidated damages clause for the protection of the Government. In such cases, all bids offering delivery within the required time limit shall be considered for award, and award shall be made to the lowest satisfactory bidder within the group of bidders complying with the time requirements.

§ 116.05-57 Liquidated damages; computation of time. Where a contract provides for liquidated damages for delay at a specific rate for each and every day or per calendar day, such damages shall be computed on the basis of calendar days rather than working days.

§ 116.05-58 Tie bids. Tie bids, all other factors being equal, will be decided by public drawing of the names of the tie bidders. This drawing may be witnessed by interested parties at time of drawing. When so requested by a bidder, drawings will be made at a set time after due notice to all interested parties.

§ 116.05-59 Unit prices govern. In case of error in the extension of prices quoted on a bid, the unit price shall govern unless the quoted unit price is so obviously in error as to be immediately apparent to both parties involved.

§ 116.05-60 Interest charges in bids. No bids shall be accepted on which a bidder insists that a provision for interest charges on overdue accounts from due date to date of payment be in and made a part of the contract. Such a bidder may be permitted to withdraw his stipulation for interest even after the opening of bids. In the absence of specific authority, no contracting officer can obligate the Government to pay interest on the amount of invoices not paid within a specified time.

§ 116.05-61 Inexperience of bidder. Inexperience alone of the lowest bidder does not justify the acceptance of a higher bid.

§ 116.05-62 Alleged incompetency of bidder. Incompetency of a bidder must be clearly shown before his bid can be rejected and a higher bid accepted. The question of competency should be carefully considered before inviting a firm to bid.

§ 116.05-63 Unknown trade name or makes. Acceptance of other than the lowest bid is not authorized when the lowest bid is rejected simply because the maker of the instrument or article named is unknown and there is a possibility of its becoming unserviceable. Acceptance of other than the lowest bid for the reason of previous use of a patented article is not alone sufficient. Purchase of a particular item without advertising simply because it has been found satisfactory in previous use is not authorized.

§ 116.05-64 Splitting of award. The splitting of an award between the lowest and a higher bidder for the alleged purpose of encouraging continued competition is not authorized. The lowest satisfactory bidder is entitled to award.

§ 116.05-65 Absence of competition. Absence of competition is a good reason for rejecting all bids and asking for new ones.

§ 116.05-66 Only one bid received. When an effort has been made to obtain competition and only one bid is received and, in the judgment of the contracting officer, it is considered reasonable, it may be accepted.

§ 116.05-67 Acceptance of one bid is rejection of all others. The acceptance of one bid is a rejection of all other bids for the same item, and one of the bids so rejected cannot be accepted at a later date. All bidders should be advised of the action taken on their bids, by notice of acceptance in the case of the bidder to whom award is made, and by notice of rejection to bidders whose bids were not accepted.

§ 116.05–68 Fraudulent bids. The United States may reject a bid in case of fraud, as when the lowest bidder is in collusion with other bidders or with the representatives of the United States to impose a high price upon the Government. In such cases, the bids of all bidders involved in the fraud shall be rejected and the case immediately referred to Headquarters.

§ 116.05-69 Rubber stamp signature acceptable. Rubber stamp signatures on a bid are acceptable provided the responsible officer is satisfied that it was placed on the bid by authority of the bidder.

§ 116.05-70 Alternative bids. Alternative bids will not be considered unless called for in the invitation.

§ 116.05-71 Bids offering modified specifications. If only the essential requirements are stated in the invitation for bids, all bids however modified or qualified should be considered although no bid can be accepted for material lacking in any of the essentials. Bids will not ordinarily be considered for any other quantity or description of supplies than specified but the right is reserved to accept any modification made by a bidder in the conditions therein stipulated. A bid modified to such an extent that its acceptance would be unfair to competing bidders will not be accepted.

§ 116.05-72 Descriptive matter and samples. Specifications, plans, illustrations, samples, or other descriptive matter, when required by the Government to be furnished by the bidder must accompany the bid. In connection with the furnishing of samples, the Comptroller General has held that failure of a bidder to submit samples as required bars consideration of his bid.

§ 116.05-73 Bidder's option. A bidder may specify a maximum quantity which will be furnished at the price quoted, and likewise a time limit for acceptance or delivery. If a proposal containing conditions of this kind is accepted, the contract is binding.

§ 116.05-74 Corrections to be explained. Corrections, erasures, or other changes in a bid must be explained or noted over the signature of the bidder.

§ 116.05-75 More than one bid submitted by the same bidder. If more than one bid be offered by any one party, by or in the name of his or their clerk, partner, or other person, all such bids may be rejected. This will not prevent a bidder from submitting modified or alternate bids quoting different prices on different qualities of materials or different conditions of delivery. A manufacturer who has quoted prices to one of the bidders is not thereby disqualified from himself submitting a direct bid for the same article.

§ 116.05-76 Modification by bidder not permitted. After bids have been publicly opened at the time set, no changes, corrections, or alterations can be made therein by the bidder.

§ 116.05-77 Modification by Government not permitted. (a) In awarding the contract to the lowest bidder the contracting officer cannot modify the terms of his bid in regard to time of delivery or any other of its material elements. While the Government may not force the bidder to accept award under terms different from those contained in his bid, modifications may, after award, be made with the bidder's consent, and the changes mutually agreed upon may be embodied in the contract.

(b) No modification of the bids shall be permitted after the opening which modifies or changes the bids so as to

affect the award.

§ 116.05-78 Modification of bids; Telegram. A bidder under an advertisement for sealed bids may, previous to the opening of the bids, modify his bid by telegram, and the modified bid, if authentic, would upon acceptance before withdrawal, bind the bidder. Telegrams modifying sealed bids which are received before the hour of opening shall immediately be placed in sealed envelopes and shall publicly be opened at the appointed hour with the original bids from the senders. However, since telegrams, unlike letters, are revocable until delivered, the official time of receipt shall be the hour at which the telegram is received by the Government (which shall be stamped or written on the telegram); the hour at which sent by the bidder shall not govern.

§ 116.05-79 Mistakes in bids. (a) The United States is not responsible for mistakes in prices made by a bidder, and an accepted bid is binding unless the prices are so disproportionate as to put the contracting officer on notice and enforcement would be unconscionable. When it appears that a bid is in error, the bidder should be requested to verify such bid prior to award.

(b) If award has not been made, the bidder may be permitted to withdraw his bid and the award should then be made

to the next qualified bidder.

(c) After award the discretion vested in the contracting officer ceases, and requests received from contractors for release on contracts based on bids in error will be forwarded to Headquarters accompanied by full data, comment, and recommendation for decision and action. Headquarters can only refer the case to the General Accounting Office for decision.

§ 116.05-80 Bidder alleges mistake. Where a bid to furnish stipulated quantities of supplies is accepted, the supplies delivered, and the contract prices paid, and it is subsequently established that at the time of the opening of the bids the contracting officer was put upon notice that the contractor had made a mistake in submitting his bid, such mistake being apparent from an examination of the bid itself and from a comparison thereof with other bids submitted, the contractor is entitled to submit a claim for the difference between the contract price and the prices intended to have been submitted for such supplies provided that the intended bid of the contractor is lower

than any other bid received thereon. Any such claim must be forwarded to Headquarters accompanied with all papers or certified copies thereof pertaining to the transaction for submission to the General Accounting Office for decision.

§ 116.05-81 Maximum prices quoted.

(a) A proposal that quotes a maximum price with a provision for a reduction in the event the current market price is reduced, without a provision for increases above the quoted maximum, is a valid basis for a contract. In such case the bidder shall state the current market price at the date of the bid and each voucher must be supported by a statement of the market price at the date of delivery. This certificate is required irrespective of whether or not any changes have been made in the price.

(b) Except as shown above, a fixed price, effective during the entire period covered by the contract must be shown.

(c) A proposal that quotes a current price, subject to market fluctuations, does not constitute the basis for a contract and shall not be considered.

§ 116.05-82 Discounts; determination of award. The determination of award when discounts are offered in bids is a matter for decision by the contracting officer. If, by reason of the offered discount, a bid is low and there appears reasonable certainty that the performance of the necessary administrative duties in connection with receipt, inspection, and payment is practicable of accomplishment, the bid should be accepted; if not, the bid should not be regarded as low. The fact that discount was considered shall be noted on Standard Form 1036.

§ 116.05-83 Award to be made within a reasonable length of time. An obligation lies upon the Government to make an award within a reasonable length of time after an opening of bids. What constitutes a reasonable time is something that cannot be definitely defined. An award should be made at the earliest practicable moment after the opening of bids. A bidder cannot, after notice by the Government of acceptance thereof, withdraw his bid.

§ 116.05-84 Acceptance of bids in writing. When bidders' proposals are submitted in writing, the contracting officer will indorse over his signature the word or words "Accepted" or "Accepted as to items Nos. \_\_\_\_\_\_" on the proposal covering the award. Acceptance shall always be in writing.

§ 116.05-85 Forms of award. When an award is made to a bidder, it will be embodied either in a formal contract, or acceptance noted on Standard Form 33.

§ 116.05-86 Error in award. If an award is made to a higher bidder in error and the contractor has proceeded with manufacture and delivery before the error has been discovered, the contract should be considered completed with deliveries already made, and payment shall be made not in excess of the lowest satisfactory bid which was received at the original opening. The contractor should then be advised that he may submit a claim to the General Accounting Office

for the difference between his price and the price quoted by the lowest satisfactory bidder. He may also submit a claim to the General Accounting Office for any damages which he may have sustained through the suspension of deliveries under his contract.

§ 116.05-87 Readvertisement. A readvertisement is equivalent to a rejection of all bids previously received.

SUBPART 116.07—PROCUREMENT BY NEGOTIATION

#### GENERAL

§ 116.07-1 Negotiation. The term "negotiation" as used in this subpart means that method of procurement under which the formal procedure for procurement by advertising is not required.

§ 116.07-2. Need for competition. Authority to negotiate purchases or contracts does not modify in any respect the fundamental principle that supplies and services will be obtained as the result of competition. Accordingly, where competition exists, qualified suppliers will be afforded the opportunity to submit quotations by informal solicitation to the extent that such procedure is consistent with the needs of the occasion.

§ 116.07-3 Absence of competition. Where no competition results from the informal solicitation, or insufficient number of suppliers submit quotations, or the prices appear excessive when checked against previous prices, or where the procurement must necessarily be placed with a single source of supply under any of the circumstances enumerated below, negotiation will be conducted on a basis of thorough analysis of the suppliers' estimated and/or historical cost data. Careful use of price cost analysis in connection with negotiated purchases will protect the Government against excessive prices.

§ 116.07-4 General limitations upon the use of negotiation. No contract shall be entered into as a result of negotiation unless the contemplated procurement comes within the circumstances permitting negotiation as stated in the act and as set forth in this subpart.

§ 116.07-5 Certain negotiations restricted to Headquarters. The negotiation of contracts under certain circumstances requires special determinations and findings by the Commandant or by the Chief, Office of Finance and Supply. Accordingly, the authority to negotiate contracts under such circumstances is restricted to Headquarters as set forth herein. The negotiation of such contracts shall be in accordance with the requirements of the act, and shall be governed, insofar as practicable, by the procedures established by the Armed Services Procurement Regulations.

§ 116.07-6 Method of negotiation. "Negotiation" is to be interpreted as the procedure by which the Government may make the most desirable type of contract for the required supplies or services, under circumstances authorized by the act, and without the necessity of following the procedures relating to procurement by formal advertising. Negotiation shall, generally, be effected by giving one

or more selected and qualified dealers an opportunity to submit a quotation (as distinguished from a "bid," which pertains to procurement by advertising) for the required items; analyzing the quotations received; and (1) either accepting the most advantageous quotation as submitted, or (2) entering into further negotiations with one or more of the dealers in an attempt to secure more advantageous terms than contained in the original quotations. In the negotiation of contracts, due attention shall be given to the following and any other appropriate factors:

(a) Comparison of prices quoted, and consideration of other prices for the same or similar supplies or services, with due regard to cost of transportation, cash discounts, and any other factor relating

to price;

(b) Comparison of the business reputations and responsibilities of the respective persons or firms who submit quotations:

(c) Consideration of the quality of the supplies or services offered, or of the same or similar supplies or services previously furnished, with due regard to the satisfaction of technical requirements;

(d) Consideration of delivery require-

ments;

(e) Discriminating use of price and cost analyses;

 (f) Investigation of price aspects of any important subcontract;

(g) Individual bargaining, by mail or by conference;

(h) Consideration of cost sharing; and

(i) Effective utilization in general of the most desirable type of contract, and in particular of contract provisions relating to price redetermination.

§ 116.07-7 Public notices not required. The posting of a copy of a notice of the proposed procurement in a public place is not required in connection with procurement by negotiation.

§ 116.07-8 Public openings not required. Although requests for the submission of written quotations should specify that the quotations are to be submitted in sealed envelopes, and should state a time limit for the receipt of such quotations, the holding of a public opening of quotations is not required.

§ 116.07-9 Sufficient time to be allowed for submission of quotations. When written quotations are requested, dealers shall be given sufficient time for the preparation and submission of their quotations. The time limit for the receipt of quotations shall be clearly stated on all requests for quotations.

§ 116.07-10 Oral quotations. While written quotations are preferable for procurement by negotiation, oral quotations may be solicited at the option of the contracting officer. It is, however, mandatory that a record of all oral quotations be maintained in connection with any purchase. For purchases involving amounts in excess of \$1,000, oral quotations should always be confirmed in writing.

RECORD AND REPORT OF NEGOTIATED
CONTRACTS

§ 116.07-15 Record and report of negotiated contracts. (a) Headquarters will maintain a record and prepare a consolidated report of the number and total value of all contracts negotiated during each fiscal year, under each of the circumstances permitting negotiation under section 2 (c) of the act.

(b) In order to compile such records and reports, each contract or purchase document representing a procurement which was effected under "Negotiation" authority shall be clearly marked in the upper right hand corner of the document with the word "Negotiated" followed by a citation of the applicable section of the act under which the negotiation was authorized; for example, a document relating to a negotiated purchase not in excess of \$1,000 would be inscribed "Negotiated, section 2 (c) (3)."

CIRCUMSTANCES PERMITTING NEGOTIATION

§ 116.07-20 Circumstances permitting negotiation. Subject to the instructions herein, and pursuant to the authority of section 2 (c) of the act, procurement may be effected by negotiation under any one of the circumstances set forth in §§ 116.07-21 to 116.07-37.

§ 116.07-21 National emergency (sec. 2 (c) (1)). Pursuant to the authority of section 2 (c) (1) of the act, purchases and contracts may be negotiated if "determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress." This authority shall be used only to the extent determined by the Commandant to be necessary in the public interest. Appropriate directives will be issued by the Commandant upon any future declaration of a national emergency by the President or by the Congress.

§ 116.07-22 Public exigency (sec. 2 (c) (2)). (a) Pursuant to the authority of section 2 (c) (2) of the act, purchases and contracts may be negotiated if "the public exigency will not admit of the delay incident to advertising." In order for this authority to be used the need must be compelling, and of unusual urgency, as when the Government would be seriously injured, financially or otherwise, if the supplies or services were not furnished by a certain date, and when they could not be procured by that date by means of advertising. Examples are the following:

 Supplies or services needed at once because of a fire, explosion, or other disaster;

(2) Essential equipment for or repair of a ship, where advertising would delay salling or where the delays incident to formal advertising would result in loss to the Government:

(3) Essential equipment for or repair to any aircraft grounded or about to be grounded, when such equipment or repairs is needed at once for the completion of the operational mission of such aircraft.

(b) Every contract negotiated under the authority of this section shall be accompanied by a Statement and Certificate of Award (Standard Form 1036), signed by the contracting officer, justifying procurement under this authority.

§ 116.07-23 (d) Purchases not in excess of \$1,000 (sec. 2 (c) (3)). Pursuant to the authority of section 2 (c) (3) of the act, purchases and contracts may be negotiated if "the aggregate amount involved does not exceed \$1,000." All purchases or contracts aggregating \$1,000 or less shall be made under this authority rather than under any other provisions permitting negotiation. In arriving at the aggregate amount involved, there must be included all supplies and services which would properly be grouped together in a single transaction, and which would be included in a single advertisement if the procurement were being effected by advertising. Purchases aggregating more than \$1,000 shall not be broken down into several purchases which are less than \$1,000 nor shall customary purchasing or contracting pro-cedures be altered, merely for the purpose of permitting negotiation. Under this authority, contracting officers may purchase any supplies or services when the aggregate total does not exceed \$1,000, by negotiation and without formal invitation for bids. Quotations may be obtained orally (over the counter), telephone, telegraph, or by written solicitation. Competition should be secured whenever practicable to do so without delaying procurement, unduly increasing the work involved in the procurement, or otherwise obviating the benefits derived under this authority. Written confirmation of all orders placed is required.

§ 116.07-24 Personal or professional services (sec. 2 (c) (4)). Pursuant to the authority of section 2 (c) (4) of the act, purchases and contracts may be negotiated "for personal or professional services." The authority to negotiate for personal or professional services shall not apply to the procurement by negotiation of any type of services authorized under any other provisions of the act. This authority is restricted to Headquarters and shall be used only when all of the following conditions have been satisfied:

(a) If personal services, they are required to be performed by an individual contractor in person (not by a firm), or if professional services, they may be performed by an individual contractor in person or by a firm or organization:

(b) The services (a) are of a professional nature, or (b) are to be performed under Government supervision and pald

for on a time basis:

(c) The procurement of such services is otherwise specifically authorized by law.

§ 116.07-25 Services of educational institutions (sec. 2 (c) (5)). Pursuant to the authority of section 2 (c) (5) of the act, purchases and contracts may be negotiated "for any service to be rendered by any university, college, or other educational institution." This authority is restricted to Headquarters, and may be used for either of the two following types of services:

(a) Educational or vocational training services to be rendered by any university, college, or other educational institution in connection with the training and education of personnel, and for necessary material, services, and supplies furnished by any such institution in connection therewith:

(b) Experimental, developmental, or research work (including services, tests, and reports necessary or incidental thereto) to be conducted by any university, college, or other educational institution, and reports furnished in connection therewith.

§ 116.07-26 Purchases outside the United States (sec. 2 (c) (6)), Pursuant to the authority of section 2 (c) (6) of the act, purchases and contracts may be negotiated if "the supplies or services are to be procured and used outside the limits of the United States and its possessions." This authority shall be used only for purchases made abroad, such as supplies, construction work, or other services for overseas installations or for use of occupational forces (irrespective of the actual place of negotiation or execution of the contract).

§ 116.07-27 Medicines or medical supplies (sec. 2 (c) (7)). Pursuant to the authority of section 2 (c) (7) of the act, purchases and contracts may be negotiated "for medicines or medical supplies". This authority shall be used only when the following requirements have been satisfied:

(a) The items are not obtainable through Public Health Service or from other Government sources of supply;

(b) Such supplies are peculiar to the field of medicine; and

(c) The cost is charged to Coast Guard appropriations (and not to Public Health Service funds); and

(d) Whenever the probable cost will exceed \$10,000 the procurement is restricted to Headquarters.

§ 116.07-28 Supplies purchased for authorized resale (sec. 2 (c) (8)). Pursuant to the authority of section 2 (c) (8) of the act, purchases and contracts may be negotiated "for supplies purchased for authorized resale." This authority cannot now be exercised by the Coast Guard.

§ 116.07-29 Perishable subsistence supplies (sec. 2 (c) (9)), Pursuant to the authority of section 2 (c) (9) of the act purchases and contracts may be negotiated "for perishable subsistence supplies."

§ 116.07-30 Supplies or services for which it is impracticable to secure competition by formal advertising (sec. 2 (c) (10)). (a) Pursuant to the authority of section 2 (c) (10) of the act, purchases and contracts may be negotiated "for supplies or services for which it is imprac-ticable to secure competition" by formal advertising. This authority will apply in the following cases, but only for transactions involving amounts in excess of \$1,000 (purchases involving amounts of \$1,000 or less will be made under the provisions of § 116.07-23):

(1) When the items are obtainable from a sole manufacturer or dealer. It is not sufficient to justify the purchase of a particular make of an item under

this authority when other makes are available which will accomplish the same results;

(2) When the items have no commercial counterpart and can only be obtained from a single source of supply;

(3) When the existence of patent rights, secret processes, or similar circumstances preclude competition;

(4) When the items are parts of equipment or apparatus already in use and can only be furnished by one dealer;

(5) When bids have been solicited by advertisement and none is received, or none complies with all essential require-

ments of the specifications;

(6) When the purchase is for utilities, including electricity, gas, water, sewage disposal, steam, railroad track maintenance and switching service, inspection and maintenance of fire alarm systems, boiler inspection, and maintenance of elevators.

(b) Every contract negotiated under the authority of this section shall be accompanied by a Statement and Certificate of Award (Standard Form 1036). signed by the contracting officer, justifying procurement under this authority.

§ 116.07-31 Experimental, developmental, or research work (sec. 2 (c) (11))—(a) Authorization, Pursuant to the authority of section 2 (c) (11) of the act, purchases and contracts may be negotiated if the Commandant "determines that the purchase or contract is for experimental, developmental, or research work, or for the manufacture or furnishing of supplies for experimentation, development, research, or test," provided that in the case of contracts for \$25,000 or less, the Chief, Office of Finance and Supply, is authorized without power of redelegation to make the required determination.

(b) Application. This authority is re-stricted to Headquarters and may be used for any of the following purchases

or contracts:

(1) Contracts relating to theoretical analysis, exploratory studies, and experimentation in any field of science or tech-

(2) Contracts calling for the practical application of investigative findings and theories of a scientific or technical na-

(3) The purchase of such quantities and kinds of equipment, supplies, parts, accessories, or patent rights thereto, and drawings or designs thereof, as are necessary for experimentation, development, research, or test; and

(4) Services, tests, and reports necessary or incidental to experimental, developmental, or research work.

(c) Limitation. In order for this authority to be used, the required determination to be made by the Commandant (or, in the case of contracts for \$25,000 or less, by the Chief, Office of Finance and Supply) must be in accordance with the requirements of section 2 (c) (11) of the act. This authority shall not be used for contracts for the quantity production of items developed as the result of prior experimentation, development, research, or test; however, research or development contracts which call for the production of a reasonable number of experimental

or test models, or prototypes, shall not be regarded as contracts for quantity production.

(d) Records and reports. Headquarters shall maintain a record of the name of each contractor with whom a contract has been entered into under this authority, together with the amount of the contract, and description of the work, and shall prepare and submit reports as required by the act.

§ 116.07-32 Classified purchases (sec. 2 (c) (12)). Pursuant to the authority of section 2 (c) (12) of the act. purchases and contracts may be negotiated for supplies or services as to which the Commandant "determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly dis-closed." This authority is restricted to Headquarters and shall be used only when military considerations necessitate security, and then only for such purchases or contracts as are classified as confidential or higher.

§ 116.07-33 Technical equipment requiring standardization and inter-changeability of parts (sec. 2 (c) (13)). Pursuant to the authority of section 2 (c) (13) of the act, purchases and contracts may be negotiated for equipment which the Commandant "determines to be technical equipment, and as to which he determines that the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts and that such standardization and interchangeability is necessary in the public inter-This authority is restricted to ests." Headquarters and shall not be used until required determinations and findings have been made by the Commandant.

§ 116.07-34 Technical or specialized supplies requiring substantial initial investment or extended period of preparation for manufacture (sec. 2 (c) (14)). Pursuant to the authority of section 2 (c) (14) of the act, purchases and contracts may be negotiated "for supplies of a technical or specialized nature requiring a substantial initial investment or an extended period of preparation for manufacture," as determined by the Commandant, "when he determines that advertising and competitive bidding may require duplication of investment or preparation already made, or will unduly delay procurement of such supplies.' This authority is restricted to Headquarters and shall not be used until required determinations and findings have been made by the Commandant.

§ 116.07-35 Negotiation after advertising (sec. 2 (c) (15)). Pursuant to the authority of section 2 (c) (15) of the act, purchases and contracts may be negotiated for supplies or services as to which the Commandant "determines that the bid prices after advertising therefor are not reasonable or have not been independently arrived at in open competition." This authority is restricted to Headquarters and shall not be used unless and until the Commandant has determined in accordance with the act, that the bid prices, after advertising for such supplies or services, are not reasonable or have not been independently arrived at in open competition. However, after such determination by the Commandant, and after a rejection of all bids, no contract shall be negotiated under this authority unless:

(a) Prior notice of intention to negotiate and a reasonable opportunity to negotiate have been given by Headquarters Contracting Officer to each responsible bidder whose bid has been rejected;

and

(b) The negotiated price is lower than the lowest rejected bid price of a responsible bidder, as determined by the Commandant; and

(c) The negotiated price is the lowest negotiated price offered by any responsible supplier.

§ 116.07-36 Purchases in the interest of national defense or industrial mobilization (sec. 2 (c) (16)). Pursuant to the authority of section 2 (c) (16) of the act, purchases and contracts may be negoti-ated if the Commandant "determines that it is in the interest of the national defense that any plant, mine, or facility or any product manufacturer, or other supplier be made or kept available for furnishing supplies or services in the event of a national emergency, or that the interest either of industrial mobilization in case of such an emergency, or of the national defense in maintaining active engineering, research and devel-opment, are otherwise subserved." This authority is restricted to Headquarters. Headquarters shall maintain a record of the name of each contractor with whom a contract has been entered into under this authority, together with the amount of the contract and description of the work, and shall prepare and submit reports as required by the act.

§ 116.07-37 Otherwise authorized by law (sec. 2 (c) (17)). Pursuant to the authority of section 2 (c) (17) of the act, purchases and contracts may be negotiated if "otherwise authorized by law." This authority is restricted to Headquarters, or to field units when specifically authorized by Headquarters, under authority of any other law which is presently existing or which may hereafter be enacted, relating to or authorizing negotiated purchases or contracts.

#### DETERMINATIONS AND FINDINGS

\$ 116.07-40 Determinations and findings. Determinations and supporting findings which are required by the act and which are referred to throughout these instructions, and which are prerequisites to the authority to negotiate certain types of contracts, will be made by Headquarters. The determinations and findings shall be in the form and requirement as specified by the act and shall, insofar as practicable, be in accordance with the procedures set forth in the Armed Services Procurement Regulations. Copies of all Headquarters determinations, decisions and findings, and all data with respect to the negotiation shall be preserved for 6 years following the date of final payment of the contract.

FORMS TO BE USED IN SOLICITING QUOTATIONS

§ 116.07-45 General. Pending the adoption of revised forms, the various

contract forms and conditions presently in use will be utilized in connection with the solicitation and submission of quotations, and execution of contracts and purchases pertaining to negotiated procurement, to the extent that such forms and conditions are not inconsistent with the requirements of the act. All reference to section 3709, Revised Statutes, shall be deleted from such forms. Authority is granted to modify such forms as may be deemed necessary by the contracting officer to conform to requirements pertaining to negotiation of contracts.

§ 116.07-46 Quotations. "Quotations" in lieu of "bids" are the basis of offers relating to negotiated procurement transactions. Standard Form 33 (Invitation, Bid, and Acceptance) shall not be used for negotiated contracts and purchases. In lieu thereof, Form CG-2982 (Request for Quotation), shall be used. Requests for quotations should be accompanied by condition sheets (Forms CG-2557-A, CG-2557-B, or CG-2557-C) as appropriate. Sealed quotations shall be requested in connection with negotiated procurement transactions, but public openings of quotations are not required ...

§ 116.07-47 Types of contracts. The act permits the use of any type of contract which will promote the best interests of the United States. Approved types of contracts include fixed price, fixed price with redetermination of prices, cost-plus-a-fixed-fee, incentive, and cost-sharing contracts. The fixed price of type of contract shall be used by field units. The use of other types of contracts is restricted to Headquarters, or to field units when specifically authorized by Headquarters. The use of "cost-plus-a-percentage-of-cost" type of contract is prohibited by the act.

§ 116.07-48 Mandatory provisions. Section 4 of the act requires that every contract negotiated under the act include a provision against contingent fees for obtaining the contract; therefore, the prescribed contract clause pertaining to warranty against contingent fees as set forth in Part 118 of this chapter shall be included in every negotiated contract. The act (sec. 8) further provides that no contract shall be exempt from the Act of June 30, 1936, as amended (Walsh-Healey Act); the Act of March 3. 1931, as amended (Davis-Bacon Act), or the Act of June 19, 1912, as amended (Eight Hour Law and Overtime Compensation) if otherwise applicable to the particular transaction. The prescribed contract clauses relating to such acts. as set forth in Part 118 of this chapter, shall be used as applicable.

§ 116.07-49 Advance Payments on Negotiated Contracts.—Contracts providing for advance payments may be made under certain definite restrictions as set forth in section 5 of the act. The making of a contract providing for an advance payment, except as provided in section 3648 R. S. (31 U. S. C. 529), is restricted to Headquarters. SUBPART 116.09—EXCHANGE OF MATERIAL TRADE-IN ALLOWANCE

§ 116.09-1 Trade-in allowance. The exchange of material as full or part payment for new or reconditioned material is permitted only when authorized by law and only when the "trade-in" allowance equals or exceeds the amounts which would have been realized by the outright sale of the items. Cash sale proposals shall be solicited for all items (except typewriters) authorized for exchange, and the bids or quotations shall be compared with the amounts offered for "trade-in" or exchange. When the cash sale bid exceeds the "trade-in" or exchange offer, the items will be sold under the bids rather than exchanged.

§ 116.09-2 Applying proceeds of sale to purchase of replacement, (a) The proceeds from the sale of the old equipment may be applied toward payment or partial payment of the replacements under certain conditions. In such cases, sufficient evidence must be furnished to permit a determination that the old and new equipment are sufficiently similar so as to fall within the provisions of the applicable statute, and there must be some action toward the purchase, by issuance of an order or requisition, if not the actual consummation of the purchase, before the proceeds of the sale may be applied.

(b) In cases meeting the conditions set forth in paragraph (a) of this section, the proceeds of the sale shall be transmitted to the administrative officer for collections by the sales officer on Form CG-2688, which shall be prepared to show deposit to the credit of the Miscellaneous Receipt account "206690 Deposits, Proceeds of Sales, Motor-Propelled Vehicles, etc., Treasury Department (fiscal year)", with reference to the particular purchase order or requisition for replacement equipment against which the proceeds are to be applied.

§ 116.09-3 Typewriters and labor saving devices. The Act of March 4, 1915 (38 Stat. 1161) (41 U. S. Code 26) authorizes the exchange of typewriters, adding machines and other labor saving devices in part payment for new machines used for the same purpose as those proposed to be exchanged. Typewriters shall be procured and exchanged exclusively by the Eureau of Federal Supply, Treasury Department, whenever a commercial purchase is contemplated. Cash sale bids need not be solicited for disposal of typewriters when a "trade-in" or exchange is involved.

\$116.09-4 Motor vehicles, airplanes, machines and tools. The Act of June 6, 1941 (55 Stat. 247) (14 U. S. Code 31b) authorizes the exchange of motor propelled vehicles, airplane engines, and parts and obsolete unserviceable machines and tools, and parts, thereof, in part payment for new equipment of the same or similar character as those proposed to be exchanged.

§ 116.09-5 Refrigerators, temperature control devices, and watchmen's clocks. The Act of April 15, 1937 (50 Stat. 64) (5 U. S. C. 118d) authorizes the exchange of used parts of mechanical refrigerators, hermetically sealed refrigerating units, temperature control devices, and watchmen's clocks as payment in full or in part for new or reconditioned parts to be used for the same purposes as those proposed to be exchanged.

§ 116.09-6 Motor-propelled or animal-drawn vehicles or tractors; road, agricultural, manufacturing, or laboratory equipment; boats. Section 8 of the Act approved August 2, 1946 (60 Stat. 808), authorizes the exchange or sale of motor-propelled or animal-drawn vehicles or tractors, or road, agricultural, manufacturing, or laboratory equipment, or boats, or parts, accessories, tires, or equipment thereof, the exchange allowance or proceeds of sales of which may be applied in whole or in part payment of similar items in replacement, provided, that any transaction carried out under this authority shall be evidenced in writing.

§ 116.09-7 Disposal authority required before exchange. The exchange authority outlined in this subpart does not permit the disposal of material without survey (of items requiring survey action). or otherwise permit disposal when prohibited by existing instructions.

#### SUBPART 116.11-SPECIFICATIONS

§ 116.11-1 General. (a) Supplies and services required shall be specified with sufficient definiteness to insure intelligent submission of proposals but not in such terms as to preclude competition. The governing factor with respect to the minimum quality shall be service requirements and the specification shall be drawn on that basis.

(b) Each unit making commercial purchases shall maintain a current file of specifications applicable to items so purchased. A formal specification in one of the numbered series shall be used

whenever available.

§ 116.11-5 Government specifications. Formal specifications have been developed according to standard pattern in numbered series by certain government agencies as follows:

(a) Federal specifications. specifications have been developed by the Federal Specifications Executive Committee, Bureau of Federal Supply, Treasury Department. Federal specifications, when required, shall be requested by letter to the Commandant (HA)

(b) Army-Navy joint specifications. These specifications have been developed by the Army-Navy Joint Specifications Board. These specifications shall be requested from local Naval Supply Depots or Purchasing Offices when required. If not obtainable from these sources they should be requested by letter to the Commandant (HA).

(c) Navy specifications. These specifications have been developed by the several Navy Bureaus under the supervision of the Navy Specifications Board. These specifications shall be requested from local Naval Supply Depots or Purchasing Offices, when required. If not obtainable from these sources they should be requested by letter to the Commandant (HA).

(d) Coast Guard specifications. These specifications shall be requested by letter to the Commandant (FS).

§ 116.11-10 Commercial designations. When in the preparation of invitations difficulty is experienced in describing or specifying the nature of the purchase and a commercial make or type is known embodying the minimum requirements, the article may be mentioned in the specification by the trade name, qualified by the words "or equal." The use of the trade name in this manner without the words "or equal," in the absence of showing that no other make will serve the purpose of the Government is not per-Should materials be offered mitted. under brand names, catalog or model numbers, they must signify that material so offered meets the specifications used in the invitation.

§ 116.11-15 Patented articles. Invitations for replacement parts of patented articles which already exist as the property of the Government shall contain the following specification: "Repair parts for (name of patented article), equal to and interchangeable with parts manufactured by (name of manufacturer), as follows: Reference to part numbers appearing in the catalog or blue prints of the manufacturer shall be cited if known.

§ 116.11-20 Quantity requirements and units of measurement .- (a) Commercial terms to be used. The unit of weight, measure, or enumeration used in the preparation of invitations shall conform to the usual commercial practice, such as dozen, gross, ton (long, short, net, gross), hundred (C), thousand (M), etc. In certain instances the pricing unit will differ from the quantity unit, as for example in the purchase of wire, cable, rope, etc., wherein a specified lineal measurement is required and expressed in feet, yards, or fathoms, and the pricing factor is based on the weight. Under these conditions, the requirement shall be to obtain a specified length of material to be charged at a specified rate per lb. Both the length requirement and the unit price factor shall be clearly shown. The usual practice is to state the required length, estimate the weight, and show the price per unit of weight. Under these conditions the contractor is entitled to reimbursement based on the weight of the material furnished under the contract.

(b) Specific dimensions. The extension of each item must be the product of the quantity and the unit price. If the article is to meet specific dimensions but the cost is to be determined by the weight (as in the case of structural iron), the unit which will be used to compute the cost shall be shown in the specifications and a notation shall be entered to the effect that the price must be submitted on that basis. The dealers shall be required to submit an estimate of the weight, which will be subject to correction upon delivery.

(c) Quantity required to be shown on invitation. (1) Definite quantities shall be shown on invitations wherever practicable.

(2) If the exact quantity cannot be determined, as in the case of term contracts, an estimated quantity shall be stated. In estimating the approximate quantities the greatest care shall be exercised to obtain as close an estimate as possible. Where the quantity can be determined within a reasonable variance, a contract clause substantially as follows should be inserted in the invitation:

The approximation furnished is solely for the information of the dealer. The Government reserves the right to purchase only such quantities as are actually required and to exceed the estimated amount by a reasonable variance not to exceed 20 per centum.

(3) Where it is not possible to determine the quantity within a reasonable limit, a contract clause substantially as follows should be inserted in the invitations:

The uncertain and varying needs of the Coast Guard make it impossible to determine the quantit or quantities of the articles and materials described herein that may be required during the contemplated period of the contract. Estimated quantities are stated for information only. It is mutually understood and agreed that the Government will order and the contractor will deliver the quantities of the kinds of articles or materials described in the specifications that in the judgment of the ordering officer may be required during the contract period, except as may be otherwise indicated. These supplies will be ordered from time to time during the life of the contract in such quantities for delivery in such forms and to such places provided for by the contract as the needs of the Coast Guard require. Proposals made with the proviso that the total deliveries will not exceed a certain specified quantity will be considered, but the right is reserved to reject any proposal which pro-vides that the Government shall guarantee to take any definite quantity.

(d) Fresh water. The unit of quantity for fresh water in bulk should conform to the usual commercial practice in the locality where proposals are solicited. Where schedule of rates for water provide for a charge for meters in accordance with size, the size of the meters shall be indicated in the contract and on the payment invoices.

(e) Fuel oil. The unit of quantity for fuel oil will be the barrel of 42 gallons of 231 cubic inches at a standard temperature of 60° F. Corrections for variations in temperature will be made in accordance with the table No. 2, circular No. 3-410, of the National Bureau of

Standards.

(f) Gasoline and kerosene. The unit of quantity for gasoline and kerosene, and similar petroleum products, is the gallon.

(g) Liquids. In the case of liquids in bulk containers, such as barrels, drums, casks, etc., the unit shall be specified in gallons or quarts, etc., and the approximate quantity shall be shown, which shall be subject to adjustment upon delivery.

(h) Lumber. (1) The unit for the purchase of lumber is the board foot. Where it is the commercial practice to specify linear feet, as in the case of molding, beading, etc., the invitation shall be formulated accordingly, and the required dimensions and the number of pieces shall be accurately stated, except where random lengths are contemplated. Each item shall show clearly whether the

board foot or the linear foot is the unit and whether the proposal is desired per thousand feet (per M), per hundred feet (per C), or per single foot (per foot).

(2) The term "pinus pondersoa" shall be used in lieu of "California White Pine"

to describe ponderosa lumber.

(i) Wood. The unit for wood is the standard cord of 128 cubic feet, but in localities where the so-called single cord (42% cubic feet) is recognized in the trade, invitations shall clearly show which is intended.

(j) Coal. The unit of quantity for coal is the ton of 2,000 pounds. The size of coal shall be specified by screen size rather than by name. In stipulating screen sizes consideration should be given to the sizes available at each point of delivery and the smallest or cheapest size shown by experience and trial to be effective shall be specified.

§ 116.11-25 Return or retention of containers. (a) Invitations and contracts which involve the delivery of items in containers such as drums, carboys, cylinders, reels, etc., must contain a clause setting forth the ownership of the containers, and the applicable provisions for either the purchase or return of containers which are involved in the purchase. If the containers are the property of the Government that fact shall be clearly set forth in the contractual papers. If the containers are originally the property of the supplier, two alternatives are available: Either to pay for the containers as a part of the purchase price, subject to allowance for the later return to the contractor; or to exclude the cost of the containers from the purchase price and arrange for later payment in the event the containers are not returned. Paragraphs (b) and (c) of this section set forth suggested contract conditions.

(b) Containers to remain the property of the contractor. When the purchase involves the use of containers which can be returned to the contractor within a reasonable length of time after delivery, and which the contractor desires to have returned, a clause substantially as follows shall be inserted in the invitation and in the contract:

Returnable containers. (drums, carboys, cylinders, reels, tanks, etc.) incident to the delivery of the items shall be furnished by the contractor without cost to the Government and will be returned to him at point of delivery in good condition \_\_ days after date of delivery. the containers are not returned within that period, the contractor will accept settlement in full from the Government at the rate of \$ .... each, and the containers shall then become the property of the Government. The contractor further agrees to accept containers in good condition which have been paid for by the Government and which are returned within 12 months after the date of delivery at the expense of the Government, and to allow a credit of \$\_\_\_\_\_ for each such container returned.

(c) Containers to become the property of the Government. When the purchase involves the furnishing of containers, the cost of which is to be included in the purchase price of the item furnished, the contract must provide a clause setting forth the fact that the containers

were purchased by the Government, and if a refund is payable for the later return of the containers, the conditions shall be set forth in the invitation and in the contract. A clause substantially as follows may be used:

§ 116.11-30 Delivery requirements—
(a) Place of delivery. (1) Normally, contracts covering deliveries to known destinations shall require delivery f. o. b. destination (shipment to be made at the contractor's expense). However, when shipment involves one or more carload lots, information shall be requested from the Commandant (FS-T) prior to contracting, whether any special freight rate agreements are in effect which would make delivery f. o. b. contractor's shipping point beneficial to the Government.

(2) Supply contracts covering delivery of material to destination which can not be determined at the time the contract is executed shall require delivery f. o. b. contractor's shipping point (shipment to destination at Government expense).

(3) Supply contracts covering delivery of material required to repair or replace Government property for which reimbursement has been obtained from persons responsible for the damage shall require delivery on an f. o. b. destination basis only.

(4) Delivery and shipment clauses shall be inserted in the invitations and

purchase documents.

(i) Shipment at Government expense. When the shipment is to be rail or freight transportation and the contractor is to bear the cost of placing supplies on board the cars or trucks at the shipping point nearest the contractor's plant, the following clause will be used:

Supplies shall be delivered f. o. b. contractor's shipping point for shipment on Government bill of lading to

(ii) Shipment at contractor's expense. When shipment is to be made to destination at the expense of the contractor, the following clause will be used:

Supplies shall be delivered, all transportation charges paid, to destination.

- (b) Delivery points to be shown. Where the invitation stipulates delivery at more than one place, the quantity shall be stated for each such point of delivery.
- (c) Time of delivery. One of the following provisions covering time of delivery will be included in invitations and purchase documents immediately following the reference as to required place and method of delivery:
- (1) Not later than \_\_\_\_\_\_ begin-(2) At the rate of \_\_\_\_\_ per \_\_\_\_\_ beginning \_\_\_\_\_ and continuing at the

rate of \_\_\_\_ per \_\_\_ until deliveries are completed.

- (3) Within \_\_\_\_\_ after date of contract.
  (4) Beginning \_\_\_\_ and completed by
- (5) Within the periods shown in the specifications.

(d) Where time is a controlling element, liquidated damages. (1) Where time of delivery or performance is to be a controlling element in the acceptance or rejection of proposals, the fact shall be clearly stated in the invitations in order that all dealers may have an equal opportunity to offer the items within the time so specified. Where it is not so stated, this element cannot be considered in the making of awards. The following clause may be used:

Time required for delivery is important and will be considered when making award. Delivery is required not later than (insert required date). A liquidated damage clause assessing a penalty of (insert rate per day and unit of assessment) for each calendar day of delay in delivery will be included in the contract.

(2) The wording of the liquidated damage clause inserted in the contract shall be in accordance with the language and conditions prescribed in § 118.05-85 of this chapter.

§ 116.11-35 Item by item and all or none basis. Generally, awards will be made on an "item-by-item" basis. However, when the best interests of the Government will be served thereby, award may be made on an "all-or-none" basis and the invitations shall so state. In the case of a Short Form Contract the dealer shall be advised to delete the words "any or" appearing in the bid portion of the contract form when award is to be made on an "all-or-none" basis.

§ 116.11-40 Repairs to vessels: Lay days. Invitations and contracts covering drydocking or hauling out of the water of vessels incident to repair work shall include an item for the cost of "Lay Days." (See Parts 118 and 120 of this chapter.)

SUBPART 116.13—Acquisition of Real PROPERTY

§ 116.13-1 Securing assignment of space in Government-owned buildings.

(a) Formal application for assignment of space in Government-owned buildings will be made to the controlling agency only by Headquarters through Treasury Department channels. Occupancy of such space shall be contingent upon authorization from Headquarters.

(b) Informal inquiry should be made of the custodians of local post offices or Federal buildings to determine availability of required office or storage space, and if available, request shall be forwarded to Commandant (FS-P) accompanied by detailed justification and Form CG-2876 (Request for Space) submitted in quadruplicate.

in quadruplicate.

(c) Request for additional space in a Government-owned building or a change in assignment therein, shall be submitted to the Commandant (FS-P) in a manner similar to the foregoing. Headquarters authority shall be obtained prior to release of assignment in Government-

owned buildings and formal return of the space assignment to the cognizant agency shall be effected by Headquarters.

§ 116.13-5 Acquisition of privately owned land or facilities by permit or lease. (a) The Coast Guard is obliged by law to utilize Government-owned facilities, if available, prior to acquiring privately owned property by permit or lease. Any proposal to acquire privately owned property by permit or lease shall be submitted to the Commandant (FS-P) accompanied by a written statement from the President of the Local Federal Businessmen's Association, certifying that suitable space adequate for the needs of the Coast Guard activity to be accommodated is not available in any Government-owned or Government rented space in the locality. In the absence of such an association, a statement shall be secured from the custodian of the local post office or Federal building.

(b) Execution of a formal lease contract is the proper method of acquiring use of real property or buildings thereon, in whole or in part, and is more preferable than by permit. Use of boats, barges, floats, scows, or floating facilities shall be legalized by Headquarters by charter upon submission of proposal and

justification.

(c) Any proposal to lease real property shall be submitted to the Commandant (PS-P) and if approved, the District Commander will be authorized to execute the lease contract and be advised as to the appropriation and subhead

chargeable with the rental.

(d) Prior to renewal of permits or leases the statement concerning the availability of Government-owned or Government-rented space required by paragraph (a) of this section will be obtained and if such space is available Form CG-2876 and request for authority to cancel the permit or lease will be submitted to the Commandant (FS-P). If such space is not available, permits or leases may be renewed without recourse to Headquarters.

§ 116.13-10 Submission of proposal to lease. (a) Bids or quotations will be obtained and all conditions of Standard Form 2 (Lease) will be applicable. The original and one copy of all bids or quotations received shall be submitted to the Commandant (FS-P) with a recommendation for acceptance. Where acceptance of other than the low bid or quotation is recommended, an explana-

tion shall be furnished.

(b) Expenditure of funds for repairs, alterations, or improvements of a leased facility in excess of twenty-five per centum of the amount of the rental for the first year of the rental term, or for the rental term if for less than one year, is prohibited. If the annual rental of the facility proposed for lease is \$2,000 or more, evidence that the rental is not in excess of 15 per centum of the fair market value of the rented premises will be required. Determination of the fair market value of the proposed space will be established by the execution of Form CG-2877 (Determination of Fair Market Value of Real Estate) and shall be submitted in quadruplicate to the Commandant (FS-P) accompanying and in support of the proposal to lease.

(c) Proposals to lease submitted to Headquarters shall include a definite statement of the purpose for which the space is to be used and designation of the unit accommodated; the number of persons who will occupy it, whether continuously or intermittently; the total area in terms of square feet; and number of rooms. Form CG-2876 (Request for space), in quadruplicate and a preliminary draft of the proposed lease on Standard Form 2 (Lease) in duplicate shall be submitted with the proposal. If the proposed space is to be used for offices and other purposes, the proportion of each shall be stated, indicating the square feet to be devoted exclusively to nonworking space, such as file rooms, storage rooms, conference rooms, display rooms, etc.

§ 116.13-15 Drafting and executing lease contracts. (a) Upon receipt of Headquarters authorization to execute a lease, the lease shall be drafted on Standard Form 2 (Lease) in accordance with the preliminary draft returned by Headquarters. Certain additional revisions shall be made to this form to further protect the interests of the Government, viz:

(1) The word "exclusively" in article 2 shall be deleted and only general terms shall be employed to indicate the intended use of the facility such as office quarters or storage space.

(2) A clause substantially as follows shall be added as article 12 of the lease;

Covenant against confingent fees. Contractor warrants that he has not employed or retained any person or selling agency to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach of warrant the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee. This warranty shall not apply to commissions payable by contractor to his bona fide, regular employees, or to bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

(3) An additional article 13 shall be added reserving to the Government the right to effect cancellation of the contract by giving the lessor thirty days written notice.

(4) If the lessor is a corporation, a corporate certificate and corporate seal will be an essential. If the lessor is a partnership or unincorporated society, authority of the individual to sign in its behalf shall be furnished as an inclosure supporting the lease.

(5) The notice from the lessor requiring restoration of the premises, as executed in article 8 of the lease shall be ten days less than the cancellation period designated in article 13 of the lease.

(6) All leases submitted to the lessor for execution shall contain the clause set forth in § 118.05-130 of this chapter, relative to nondiscrimination in employment.

(b) Numbering, distribution and filing of lease contracts. See subpart 118.03.

§ 116.13-20 Cancellation of lease contracts. When it has been determined that a leased facility is no longer required, request for authority to cancel shall be submitted to the Commandant (FS-P) for approval prior to issuance of cancellation notice. Upon receipt of authority to cancel, cancellation notices shall be issued to the lessor sufficiently in advance of the effective date thereof, to permit the accomplishment by the Government of any restoration required under article 8 of the lease. Two copies of the notice of cancellation shall be forwarded to the Commandant (FS-P) concurrent with issuance to the lessor.

SUBPART 116.15-CERTIFICATES OF AWARD

§ 116.15-1 Procurement by advertising. (a) Every contract and purchase agreement (except for purchase orders issued under existing contracts) made as the result of advertising, shall be supported by a Statement and Certificate of Award (Standard Form 1036), signed by the contracting officer to show the method and extent of advertising; and the basis of award. If other than the lowest bid is accepted, the reasons for rejection of the lower bids shall be explained on the form.

(b) On formal and short form contracts requiring the assignment of a contract number, the original signed certificate shall be attached to the original of the contract. A copy of the certificate shall also be attached to the copy forwarded to Headquarters, and a copy shall be retained with the official file copy of the contract at the contracting office.

(c) On purchases made on short form contract not requiring the assignment of a contract number, the original signed certificate shall be attached to the original of the accepted bid and a copy shall be retained in the official files of the contracting office.

(d) The name of the contractor will be inserted at the top of the form above the space provided for the contract number.

(e) The appropriation and subhead pertaining to the contract shall be noted

on the certificate.

(f) When acceptance of other than the lowest bid as to price (expenditures) or other than the highest bid as to price (receipts) is made, Standard Form 1036 will list in detail the results of all bids. If acceptance of a higher bid (expenditures) or a lower bid (receipts) is made, the reasons for rejection of the lowest bid (expenditures) or the highest bid (receipts) shall be listed on the form, in a manner substantially as shown in the specimens below:

Specimen 1 (acceptance of other than lowest bid—expenditures):

John	Doe &	Co		\$450.00
John	Smith	& Co.	(awarded)	460.00
John	Jones	& Co		470.00

Lower bid of John Doe & Co. rejected as samples submitted did not meet the specifications, being brass instead of bronze.

Specimen 2 (acceptance of other than the highest bid—receipts):

John	Doe &	Co	*450.00
John	Smith	& Co. (awarded)	460.00
John	Jones &	CO	470.00

Higher bid of John Jones & Co. rejected as bidder called for delivery at his yard contrary to "where is, as is" provision of specifications.

§ 116.15-5 Procurement by negotiation. (a) A Statement and Certificate of Award (Standard Form 1036) is not required for procurement by negotiation. when the aggregate amount involved does not exceed \$1,000.

(b) A Statement and Certificate of Award (Standard Form 1036) is required when procurement is made by negotiation under either of the following condi-

(1) When the public exigency will not admit of the delay incident to advertising.

(2) When it is impracticable to secure competition by formal advertising.

#### SUBPART 116.17-TAXES

§ 116.17-1 Federal taxes. (a) The United States Government is exempt from the payment of tax on the following items only:

(1) Transportation of persons on Government transportation requests. When transportation requests are not used the tax must be paid and exemption will not be allowed.

(2) Transportation of property under Government bill of lading. Converted commercial bills are included.

(3) Telephone, telegraph, cable, radio, and leased wire service or facilities furnished directly to the Government.

(b) The clause prescribed by § 118.05-155 of this chapter shall be incorporated in all contracts and purchase agreements.

§ 116.17-5 State and local taxes. (a) The United States Government is generally exempt from the payment of State and local taxes.

(b) The clause prescribed by § 118.05-155 of this chapter shall be incorporated in all contracts and purchase agree-

§ 116.17-10 Tax exemption certificates. (a) Only one form of tax exemption certificate-Standard Form 1094is issued by Government officers to vendors with respect to Federal taxes. Form 1094 will be issued by the cognizant contracting officer only when required by the contract to furnish proof of exemption with respect to those taxes which have been excluded from the contract price.

(b) Standard Form 1094 will be used for State and local taxes, except when a different form is required by the State or

local taxing authority.

(c) The certificate will be issued to the vendor only when the price paid is exclusive of Federal, State, or local tax.

(d) If the vendor refuses to sell at a price exclusive of State or local tax, the certificate will be used by the Government as the basis for billing the taxing authority for refund. The certificate. supported by a memorandum copy of the payment voucher and a copy of the vendor's invoice or delivery ticket showing point of delivery, will be forwarded to the Commandant (FS-P)

(e) Only those officers who have received the United States Government tax exemption identification card (Form

1094C) may issue certificates. The tax identification card contains a number which must be inserted on every certificate issued by the authorized officer.

(f) District Commanders and commanding officers of independent units may obtain certificates and identification cards by letter request to the Commandant (HA). A record, listing the serial numbers of all certificates and identification cards received and the names of the persons to whom issued shall be maintained. A receipt shall be taken for all certificates and identification cards issued. Certificates and identification cards shall be recalled when no longer required by the holder or when the holder is transferred outside the command. Certificates may be reissued; identification cards shall be destroyed.

(g) Units within a command may obtain certificates and identification cards by request to District Commanders.

(h) Tax exemption certificates will not be issued:

(1) For merchandise purchased which is subject only to the Federal tax and such tax is included in the price paid.

(2) For items of subsistence expense when an official or employee of the Federal Government is traveling on official business under a per diem allowance.

(3) For items of travel expense when an official or employee of the Federal Government is traveling on official business in his personally owned motor vehicle and is granted a mileage allowance.

(4) By individuals in official travel status, unless payment is actually made

at the time of purchase.

(i) A single certificate may be issued where purchases are made under contract providing for deliveries extending over a period of time. Orders placed under such contracts will bear the serial number of the blanket certificate.

(j) When a certificate is used in connection with the purchase of gasoline or oil delivered into the fuel tank or crankcase of a motor vehicle, the license plate number or other official vehicle designation will be shown in the space provided on the certificate,

(k) A separate certificate shall be used for each class of tax involved (Federal, State, or local). Care must be exercised by the purchaser to fill in the blocks provided for showing on each certificate the separate amounts or rates of taxes involved so that the certificate may be used only for the purpose intended. If the space provided for showing the quantity, price, etc., of the articles purchased is not sufficient, a separate statement may be attached to the form. Blocks other than the one representing the tax involved shall be blanked out by inserting three X's. In addition to the signature and title, the identification card number of the purchaser must always be shown in the space provided therefor.

(1) The serial number of each certificate prepared shall be shown on the payment voucher.

(m) The pertinent data as to issuance of certificates shall be listed on the tabulation sheet contained in the book of certificates.

(n) When all certificates in a book have been used the cover and tabulation sheet shall be forwarded to the issuing unit for further transmittal to the Commandant (HA).

(o) Certificates and identification cards shall be properly safeguarded to prevent loss or unauthorized use.

#### PART 118-CONTRACTS

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AUTHORITY: \$\$ 118.01-1 to 118.05-165 issued under 62 Stat. 21; 41 U. S. C. Sup. II 151-161.

#### SUBPART 118.01-GENERAL PROVISIONS

§ 118.01-1 Forms of agreement. (a) All contractual obligations shall be recorded on either a Formal Contract, Short Form Contract, or Purchase Order. (b) Formal contract. A formal contract contemplates the reduction of an agreement to a single written document signed by both parties at the end thereof, and generally relates to the execution of a Standard Form of Contract, such as Form 23, Construction Contract, or Form 32, Supply Contract, which are drawn and prepared after acceptance of bids or quotations. Bonds, drawings, specifications, conditions and other relevant papers may be incorporated into the contract by appropriate reference.

(c) Short form contract. A contractual form whereby the invitation for bids, bid and acceptance is contained in one instrument, as in Standard Form No. 33, Invitation, Bid and Acceptance (Short Form Contract). The use of the Short Form Contract is restricted to procurement by advertising, and is limited to transactions involving amounts of less than \$5,000. Whenever bonds are required in connection with a contract, it is necessary to use the formal contract forms; the short form contract is not satisfactory for bonded contracts. Short form contracts shall not be used for procurement by negotiation.

(d) Purchase orders. Purchase Orders (Form CG-2557) may be used as a contractual agreement for procurement by negotiation when the transaction does not require the use of a formal contract.

§ 118.01-5 Types of contracts—(a) Specific contracts. A specific contract is an agreement to furnish a stated item, at a specified time, in a definite quantity and at a price agreed upon and set forth in the contract, which items must in the absence of mutual agreement as to modification, be accepted and paid for by the Government.

(b) Term contracts. A term contract is an agreement to furnish certain articles or services as may be required during a stated period of time, or involving multiple deliveries in stated quantities, over a period of time. Term contracts shall clearly show the interval of time covered by the contract, such as 1, 2, 3, 6, 9, or 12 months. Term contracts shall not extend beyond the end of a fiscal year. Items covered by term contracts must be purchased from the contractor and duplicating contracts with other firms for the same items shall not be executed.

§ 118.01-10 Expiration of contracts. A contract, whether specific or term, expires when the maximum quantity stipulated therein has been delivered. When a contract has been made for a specific quantity and it later develops that the quantity contracted for is insufficient, additional quantities cannot be purchased under the existing contract and the execution of a new contract is required. The apparent probability that the additional quantities may be furnished by the original contractor because of his being engaged upon the original work is for determination only by soliciting bids or quotations from all probable sources of supply.

§ 118.01-15 Legality of contracts. If any doubt arises as to the propriety or legality of entering into a contract, all proposals shall be forwarded to Headquarters for decision, with a letter setting forth the problems involved. In case of emergency the question may be submitted by dispatch.

§ 118.01-20 Award of contracts in anticipation of funds. It is unlawful to enter into a contract in anticipation of funds. However, term contracts for future requirements may contain a qualifying clause stating the contract is subject to the availability of appropriated funds if agreeable to the contractor. Purchase orders for delivery under such contracts shall not be placed until funds are made available.

§ 118.01-25 Execution of term contracts. (a) Coast Guard contracting officers are authorized to execute term contracts to cover an extended period of time for furnishing ration supplies, fuels, ice, water, garbage removal service and other materials and services of common, general use, that readily lend themselves to consolidated procurement.

(b) The execution of term contracts for repairs to vessels is authorized when deemed advantageous by the contracting officer. Term contracts should be executed only at units to which numerous vessels of similar characteristics, which require frequent hauling out and minor repair work, are attached. The use of term contracts is restricted to minor repair work on vessels not larger than 125 feet in length. Work on larger vessels and all major overhaul and repair work shall be the subject of specific contracts.

§ 118.01-30 Contract bulletins. (a) Information bulletins covering term contracts executed by a Coast Guard contracting officer shall be promptly furnished to all units which may make use of such contracts. The bulletins shall be in sufficient detail to permit settlement of vouchers and shall cite contract numbers, date of the contract, name and address of the contractor, delivery points and delivery conditions, items and prices, applicable discounts, and code symbols relating to sources of procurement and circumstances governing procurement.

(b) District Commanders shall furnish information covering contracts, executed by other Government agencies, which are available for Coast Guard use, to all district units which may make use of such contracts.

§ 118.01-35 Appropriation chargeable to be cited in the contract. All specific contracts shall clearly indicate the appropriation, allotment and/or fund chargeable with the cost of the work. This information shall be stated in the contract and on all change orders issued in connection with the contract.

§ 118.01-40 Notification of contract awards to Department of Labor. Department of Labor Form PC-1, Notice of Award of Contract, shall be prepared and submitted in quadruplicate to the Department of Labor, whenever a contract is executed by a Coast Guard unit for supplies and equipment involving an amount of \$10,000 or more. This form may be obtained either from local branch offices of the Department of Labor or from Headquarters.

#### SUBPART 118.03—PREPARATION OF CONTRACTS

§ 118.03-1 Contract forms to be used in executing contracts—(a) Formal contracts. (1) Supply contracts for amounts of \$5,000 or more (and for lesser amounts at the discretion of the contracting officer) and contracts involving the use of bonds shall be executed on Standard Form 32 (Contract—Supplies).

(2) Coal contracts shall be executed on Standard Form 41 (Contract—Coal) except under the following conditions when short form contracts or purchase

orders may be used.

When required for marine use.
 When purchase is for 300 tons or less.

(iii) When deliveries are required in less than carload lots.

(iv) When required for emergency use, (v) When required for testing pur-

poses.

(3) Construction and repair contracts for amounts of \$2,000 or more (and for lesser amounts at the discretion of the contracting officer), and contracts involving the use of bonds, shall be executed on Standard Form 23 (Contract—Construction).

(4) Contracts for repairs to vessels, when prepared on Standard Form 23, shall be amended before execution by deleting article 17 (Rate of Wages), Davis-Bacon Act, and noting such deletion under article 22 (Alterations).

(b) Short form contracts. (1) Supply contracts, made by advertising, for amounts of less than \$5,000, and not involving the use of bonds, may be executed on Standard Form 33 (Invitation, Bid and Acceptance).

(2) Construction and Repair contracts, made by advertising, for amounts of less than \$2,000, and not involving the use of bonds, may be executed on Standard Form 33 (Invitation, Bid and Acceptance).

(3) Short Form contracts, Standard Form 33 (Invitation, Bid and Acceptance), shall not be used for procurement

by negotiation.

(c) Purchase orders. Purchase Orders (Form CG-2557) may be used as a contractual agreement for procurement by negotiation, when the transaction does not require the use of a formal contract.

(d) Telephone service. See Chapter XV, Coast Guard Pay and Supply Instructions.

(e) Lease of real property. Contracts (leases) for the acquisition of real property shall be executed on Standard Form 2 (Lease). (See subpart 116.13 of this

chapter.)

(f) Special contract conditions. Special contract conditions, when required in connection with a contract, in addition to the standard articles incorporated in the printed contract forms shall be incorporated into the contract by reference and/or attachment thereto. In every case, the incorporation of such conditions into the contract shall be clearly stated in the basic contract form, under article 1, Scope of this Contract, on formal contracts for supplies; under article 1, Statement of Work, on formal contracts for construction; or in

the body of Standard Form 33 (Invitation, Bid and Acceptance), and Form CG-2557 (Purchase Order). The conditions shall be incorporated into the contract in a manner substantially as follows:

 Subject to the conditions of Form CG-2557-A, Purchase Conditions, attached hereto and forming a part of this contract, or

(2) Subject to the conditions of articles of Form CG-2557-A, Purchase Conditions, attached hereto and forming a part of this contract.

(g) Contracts to be executed by headquarters. (1) All contracts for the construction of vessels shall be executed by Headquarters.

(2) All contracts for the construction of major shore structures shall be exe-

cuted by Headquarters.

(3) All contracts for amounts in excess of the monetary limitations set forth in Part 116 of this chapter shall be executed by Headquarters or under Headquarters' direction.

(4) Contracts negotiated under circumstances requiring Headquarters' action, as set forth in Part 116 of this chapter, shall be executed by Headquarters,

§ 118.03-5 Contract numbers. (a) The contracts listed below shall be numbered in accordance with the uniform system prescribed by the General Accounting Office.

 Every contract involving, or likely to involve, an amount of \$2,000 or more.

(2) All term contracts.

(3) All contracts which involve more than one payment, or which involve partial payments.

(4) All leases.

(5) All sales contracts.

(b) The uniform system prescribed by the General Accounting Office requires the use of a complete symbol consisting of (1) The capital letter "T" indicating the Treasury Department, (2) A numerical symbol indicating the Coast Guard activity, and (3) The small letters "cg" indicating the Coast Guard, followed by the serial number of the particular contract. Example, Tolcg-1 (the first contract executed by the 1st Coast Guard District).

(c) The following units are authorized to assign contract numbers, using the identifying symbols shown herein:

A STATE OF THE PARTY OF THE PAR	100 mm
Headquarters	Tcg-
1st Coast Guard District (Boston) -	T01cg-
2d Coast Guard District (St.	
Louis)	T02cg-
3d Coast Guard District (New	-
York)	T03cg-
5th Coast Guard District (Nor-	1000
folk)	TOSOF-
7th Coast Guard District (Miami)	
	Torog-
8th Coast Guard District (New	monage.
Orleans)	Inock-
9th Coast Guard District (Cleve-	-
land)	Toacs-
11th Coast Guard District (Long	
Beach)	Tllcg-
12th Coast Guard District (San	
Francisco)	T12cg-
13th Coast Guard District (Seat-	A. C. C.
tle)	T13cg-
14th Coast Guard District (Hono-	
	T14cg-
Academy	T44cg-
Supply Depot, Alameda, Calif	T41cg-
Supply Depot, Jersey City, N. J	T42cg-
outbit nebot acted city, to a	T. TOOR

Supply Depot, Jersey City, N. J. (clothing contracts)	T50cg-
Training Station, Groton, Conn	
Washington Radio Station	T46cg-
Aircraft Repair and Supply Base, Elizabeth City, N. C.	ALCOHOL:

§ 118.03-10 Acceptance and numbering of contracts. (a) Bids or quotations solicited by units which are not authorized to execute contracts or assign contract numbers shall be transmitted to District Commanders (or to the Commandant (FS-P) in the case of independent units) for acceptance and assignment of a contract number.

(b) The original and three copies of each bid or quotation shall be forwarded with a letter furnishing the following

information:

(1) Necessity for the contract.

(2) The names of dealers from whom bids or quotations were solicited.

(3) Place or places where notices were posted.

(4) Names of dealers from whom bids or quotations were received.

(5) Recommendation as to award.

§ 118.03-15 Distribution of contracts.

(a) Numbered contracts and change orders shall be distributed as prescribed below:

 Original, supported by original Standard Form 1036 and related bonds, to Commandant (FS-P), for transmittal

to General Accounting Office.

(2) One copy, supported by copy of Standard Form 1036 when required, to Commandant (FS-P) for file. An additional copy (without Standard Form 1036) shall be forwarded in the case of all contracts pertaining to the construction and/or repair of shore structures.

(3) One copy to the contractor. This copy will be forwarded via the unit submitting the proposals for acceptance.

(4) One copy to the unit submitting the proposals for acceptance for file. The unit submitting the proposals for acceptance will forward certified copies to the vouchering office, inspector and other interested parties as required.

(b) Unnumbered contracts shall be distributed as prescribed below;

(1) Original, supported by original Standard Form 1036 when required, to the unit submitting the proposals for acceptance, to support the first payment voucher.

(2) Copy, supported by copy of Standard Form 1036 when required, to the unit submitting the proposals for acceptance, to support the authorized certifying officer's copy of the first payment youcher.

(3) One copy shall be retained in the file of the contracting office.

(4) One copy to unit submitting the proposals for acceptance, for transmittal to the contractor. The unit submitting the proposals for acceptance will prepare certified copies for file and transmittal to the inspector and other interested parties as required.

§ 118.03-20 Rejected proposals (bids and quotations). (a) The original of each rejected proposal shall be attached to the retained copy of the contract to which it is related.

(b) Copies shall be returned to the unit submitting the proposals for acceptance.

(c) The unit submitting proposals for acceptance shall notify unsuccessful dealers of the rejection of their proposals.

§ 118.03-25 Contract files. Contracts made as the result of advertising; and negotiated contracts relating to public exigency, purchases not in excess of \$1,000, for personal or professional services, for services rendered by educational institutions, and for supplies or services procured and used outside the limits of the United States and its possessions; shall be filed, together with all related data, for a period of not less than 3 years from date of final payment of the contract. All other types of contracts made as the result of negotiation shall be filed. together with all determinations, decisions, findings, and related data, for a period of not less than 6 years from date of final payment of the contract.

#### SUBPART 118.05-CONTRACT PROVISIONS

§ 118.05-1 Provisions to be incorporated in contracts. (a) The contracting officer shall insure that invitations for proposals and contracts contain all of the conditions and provisions required by law and regulations. However, care must be exercised not to include citation to any law which is not applicable as such citation may tend to result in higher bids. Standard Government contract forms generally contain the required conditions and provisions.

(b) Where the contract provisions prescribed by these instructions are not contained in standard forms, they shall be incorporated in the contract. They may be incorporated by appending supplementary papers, suitably referenced.

(c) Additional provisions deemed necessary by the contracting officer, but not inconsistent with the provisions of these instructions, may be incorporated in schedules or other accompanying papers.

§ 118.05-5 Officials not to benefit. Every contract shall contain the following clause:

ARTICLE ..... Officials not to benefit. No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

§ 118.05-10 Covenant against contingent fees. Every contract shall contain the following clause:

Covenant against contingent jees. Contractor warrants that he has not employed or retained any person or selling agency to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach of warrant the Government shall have the right to annul this contract without liability or, in its discretion; to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee. This warranty shall not apply to commissions payable by contractor to his bona fide, regular employ-

ees, or to bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

§ 118.05-15 Disputes, (a) Every formal supply contract shall, and other supply contracts may, contain the following clause:

ARTICLE \_\_\_\_. Disputes. Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the contracting officer, subject to written appeal by the contractor within thirty days to the head of the department or his duly authorized representative whose decision shall be final and conclusive upon the parties thereto. In the meantime, the contractor shall diligently proceed with performance.

(b) Every formal construction contract shall, and other construction contracts may, contain the following clause:

ARTICLE \_\_\_\_\_ Disputes. Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract, shall be decided by the contracting officer, subject to written appeal by the contractor within 30 days to the head of the department concerned or his duly authorized representative, whose decision shall be final and conclusive upon the parties thereto. In the meantime the contractor shall diligently proceed with the work as directed.

§ 118.05-20 Alterations. Every formal contract shall contain the following

ARTICLE \_\_\_\_. Alterations. The following changes were made in this contract before it was signed by the parties hereto: (followed by itemization of changes made).

§ 118.05-25 Changes. (a) Every formal supply contract shall, and other supply contracts may, contain the following clause:

ARTICLE ..... Changes. Where the supplies to be furnished are to be specifically manufactured in accordance with drawings and specifications, the contracting officer may at any time, by a written order, and without notice to the sureties, make changes in the drawings or specifications, except Federal Specifications. Changes as to shipment and packing of all supplies may also be made as above provided. If such changes cause an increase or decrease in the amount due under this contract, or in the time required for its performance, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. No change involving an estimated increase or decrease of more than \$500 shall be ordered unless approved in writing by the head of the department or his duly authorized representative. Any claim for adjustment under this article must be asserted within 10 days from the date the change is ordered, provided, however, that the contracting officer if he determines that the facts justify such action, may receive and consider, and with the approval of the head of the department or his duly authorized representative, adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made the dispute shall be determined as provided in the article "Disputes" hereof. But nothing provided in this article shall excuse the contractor from proceeding with the contract as changed.

(b) Every formal construction contract shall, and other construction contracts may, contain the following clause:

Astricle ..... Changes. The contracting officer may at any time, by a written order,

and without notice to the sureties, make changes in the drawings and/or specifications of this contract and within the general scope thereof. If such changes cause an increase or decrease in the amount due under this contract, or in the time required for its performance, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. No change involving an estimated increase or decrease of more than \$500 shall be ordered unless approved in writing by the head of the department or his duly authorized representative. Any claim for adjustment under this article must be asserted within 10 days from the date the change is ordered: Provided, however, That the contracting officer, if he determines that the facts justify such action, may receive and consider, and with the approval of the head of the department or his duly authorized representative, adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fall to agree upon the adjustment to be made the dispute shall be determined as provided in the article "Disputes" hereof. But nothing provided in this article shall excuse the contractor from proceeding with the prosecution of the work so changed.

§ 118.05-30 Extras. (a) Every formal supply contract shall, and other supply contracts may, contain the following clause:

ARTICLE ..... Extras. Except as otherwise provided, no charge for extras will be allowed unless the same have been ordered in writing by the contracting officer and the price stated in such order.

(b) Every formal construction contract shall, and other construction contracts may, contain the following clause:

ARTICLE ..... Extras. Except as otherwise herein provided, no charge for any extra work or material will be allowed unless the same has been ordered in writing by the contracting officer and the price stated in such order.

§ 118.05-35 Changed conditions. Every formal construction contract shall, and other construction contracts may, contain the following clause:

ARTICLE ..... Changed conditions. Should the contractor encounter, or the Government discover, during the progress of the work subsurface and/or latent conditions at the site materially differing from those shown on the drawings or indicated in the specifications, or unknown conditions of an unusual nature differing materially from those ordinarily encountered and generally recog-nized as inhering in work of the character provided for in the plans and specifications, the attention of the contracting officer shall be immediately called to such conditions before they are disturbed. The contracting officer shall thereupon promptly investigate conditions, and if he finds that they do so materially differ the contract shall, with the written approval of the head of the department or his duly authorized representative, be modified to provide for any increase or decrease of cost and/or difference in time resulting from such conditions.

§ 118.05-40 Increase or decrease. In cases where it is desired to accept over or under deliveries due to manufacturing processes, etc., supply contracts may contain a clause substantially as follows:

ARTICLE ..... Increase or decrease. Unless otherwise specified, any variation in the quantities herein called for, not exceeding 10 percent, will be accepted as a compliance with the contract, when caused by conditions of loading, shipping, packing, or allowances in manufacturing processes, and payments shall be adjusted accordingly.

§ 118.05-45 Additional security. The following clause shall be inserted in all contracts where bonds have been furnished:

ARTICLE \_\_\_\_\_ Additional security. Should any surety upon any bond furnished in connection with this contract become unacceptable to the Government, or if any such surety shall fall to furnish reports as to his financial condition from time to time as requested by the Government, the contractor must promptly furnish such additional security as may be required from time to time to protect the interests of the Government or of such persons supplying labor or materials in the prosecution of the work contemplated by the contract.

§ 118.05-50 Patents. If it is deemed necessary to include an article on patents, the following clause shall be inserted in the contract:

ARTICLE ..... Patents. The contractor shall hold and save the Government, its officers, agents, servants, and employees, harmless from liability of any nature or kind, including costs and expenses, for or on account of any patented or unpatented invention, article, or appliance manufactured or used in the performance of this contract, including their use by the Government.

§ 118.05-55 Other contracts. Every formal construction contract shall, and other construction contracts may, contain the following clause:

ARTICLE \_\_\_\_\_, Other contracts. The Government may award other contracts for additional work, and the contractor shall fully cooperate with such other contractors and carefully fit his own work to that provided under other contracts as may be directed by the contracting officer. The contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor.

§ 118.05-60 Permits and responsibility for work. Every formal construction contract shall, and other construction contracts may, contain the following clause:

ARTICLE ..... Permits and responsibility for work. The contractor shall, without additional expense to the Government, obtain all required licenses and permits and be responsible for all damages to persons or property that occur as a result of his fault or negligence in connection with the prosecution of the work, and shall be responsible for all materials delivered and work performed until completion and final acceptance. Upon completion of the contract the work shall be delivered complete and undamaged.

§ 118.05-65 Responsibility for supplies tendered. Every supply contract shall contain the following clause:

ARTICLE ..... Responsibility for supplies tendered. The contractor shall be responsible for the articles or materials covered by this contract until they are delivered at the designated point, but the contactor shall bear all risk of rejected articles or materials after notice of rejection. Where final inspection is at point of origin but delivery by contractor is at some other point, the contractor's responsibility shall continue until delivery is accomplished.

§ 118.05-70 Superintendence by contractor. Every formal construction contract shall, and other construction contracts may, contain the following clause:

ARTICLE ..... Superintendence by contractor. The contractor shall give his personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the contracting officer, on the work at all times during progress, with authority to act for him.

§ 118.05-75 Payments. (a) Every supply contract shall contain the following clause:

ARTICLE ..... Payments. The contractor shall be paid, upon the submission of prop-erly certified invoices or vouchers, the prices stipulated herein for articles delivered and accepted or services rendered, less deductions, if any, as herein provided. Unless otherwise specified, payments will be made on partial deliveries accepted by the Government when the amount due on such deliverles so warrants; or when requested by the contractor, payments for accepted partial deliveries shall be made whenever such payments would equal or exceed either \$1,000 or 50 percent of the total amount of the con-

(b) Every formal construction contract shall, and other construction contracts may, contain the following clause:

ARTICLE \_\_\_\_, Payments to contractors, (1) Unless otherwise provided in the specifica-tions, partial payments will be made as the work progresses at the end of each calendar month, or as soon thereafter as practicable, on estimates made and approved by the contracting officer. In preparing estimates the material delivered on the site and prepara-tory work done may be taken into consideration.

(2) In making partial payments there shall be retained 10 percent on the esti-mated amount until final completion and acceptance of all work covered by the contract: Provided, however, That the contracting officer, at any time after 50 percent of the work has been completed, if he finds satisfactory progress is being made, may make any of the remaining partial payments in full: And provided further, That on com-pletion and acceptance of each separate building, vessel, public work, or other divi-sion of the contract, on which the price is stated separately in the contract, payment may be made in full, including retained per-

centages thereon, less authorized deductions,
(3) All material and work covered by partial payments shall thereupon become sole property of the Government, but this provision shall not be construed as relieving the contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the Government to require fulfill-ment of all of the terms of the contract.

(4) Upon completion and acceptance of all work required hereunder, the amount due the contractor under this contract will be paid upon the presentation of a properly executed and duly certified voucher therefor, after the contractor shall have furnished the Government with a release, if required, of all claims against the Government arising under and by virtue of this contract, other than such claims, if any, as may be specifi-cally excepted by the contractor from the operation of the release in stated amounts to be set forth therein.

§ 118.05-80 Domestic preference. (a) The act approved March 3, 1933 (47 Stat. 1520) (41 U.S. C. 10 a-c) restricts the purchase and use of all materials not mined, produced or manufactured in the United States. The Director of Procurement has ordered that, in deciding the reasonableness of the cost of domestic products, the following differential scales shall be applied in favor of the domestic articles, materials or supplies.

(1) On purchases where the foreign bid is \$100 or less, a differential of 100 percent shall apply.

(2) On purchases where the foreign bid exceeds \$100, a differential of 25 percent shall apply.

(3) The above differentials are to be applied to purchases within the continental limits of the United States, exclusive of Alaska.

(b) If, after applying the differential, the low bid is for materials not mined. produced in the United States or manufactured in the United States substantially all from articles, materials or supplies mined, produced, or manufactured, as the case may be, in the United States, the bids will be forwarded to Headquarters for instructions or a certificate from the head of the department as the case may require prior to award.

(c) Where all bidders offer material of foreign growth, production or manufacture, the bids likewise shall be submitted to Headquarters. In cases of urgency the facts may be reported by

dispatch.

(d) The following listed materials and supplies, and any articles, materials or supplies which are manufactured principally from any of the items listed may be purchased without regard to the country of origin. The contract provisions prescribed in paragraphs (e) and (f) of this section need not be included in any contract for the purchase of articles, materials or supplies exempted by this

Supplies to be procured for public use

Derris and tumbo Aluminum. roots. Anchovies. Diamonds, industrial Antimony. and abrasive. Antipasto. Emetine. Argols, tartar and wine lees. Ergot. Ester gum. agave. Asbestos. Fiber, Balsa. Bananas. Fish paste and roe. Flax and flaxseed. Beryl. Bismuth. Goat and kid skins. Brazil nuts. Graphite. Cadmium. H mp. Hyoscine. Calcium cyanamide. Calcium nitrate. Iodine. Calcium tartrate. Jewel bearings. Capers. Jute and jute bur-Castor off. laps. Kuarigum. Caviar. Celestite. Lac. Chalk, English. Lead. Chocolate. Leather. Chrome ore or chro-Lentils. Lignum vitae. mite. Cinchona bark. Lobster meat. Mahogany. Citron. Clay, English ball or Manganese. Menthol. or English china. Mica. Cobalt (ore and met-Mercury. nis). Cocca and cocca Mohair. fiber. Monazite. Nickel. Cocoanut oil. Nitroguanidine. Cod roe. Nux vomica. Coffee. Columbite. Olive oil. Olives. Copper. Copper nickel alloy, Opium. Optical glass. natural. Copra. Palm oil. Cork. Papaw juice or crude Corundum. papaw. Crab meat. Pate de fole gras. Cryolite, natural. Perilla oil.

Damar gum.

Petroleum and the products derived therefrom. Platinum. Platinum group metals. Pulp for paper production. Pyrethrum flowers. Quartz crystals. Quebracho. Quinidine. Radium salts. Rapeseed oil. Rubber, crude and milk of. Sapphires and rubles. Sardines. Shellac.

Sperm oil. Spices. Sugar. Tale. Tantalite. Tapioca. Tea. Teak. Tin. Tung oil. Tungsten ore and concentrates. Uranium (oxide and salts). Vanadium, Vanilla beans and extract. Wattle bark. Wax cornauba and ceresin. Zerconium. Zinc.

Supplies to be used in the construction, alteration, or repair of any public building or public work

Antimony. Kuarlgum. Asbestos. Lac. Balsa. Mahogany. Chrome ore or Mercury. Mica. chromite. Clay, English ball or Nickel. English china. Platinum. Copper. Rubber. Copper nickel alloy, Silk. natural. Teak. Tin. Jute and jute bur-Tung oil. laps. Tungsten.

(e) Every construction contract shall contain the following clause:

ARTICLE \_ Domestic preference. In the performance of the work covered by this con-tract, the contractor, subcontractors, material men or suppliers shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States. The foregoing provisions shall not apply to such articles, materials, or supplies of the class or kind to be used or such articles, materials, or supplies from which they are manufactured, as are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or to such articles, materials, or supplies as may be excepted by the head of the department under the proviso of title III, section 3, of the act of March 3, 1983, 47 Stat. 1520 (U. S. Code, title 41, sec. 10b).

(f) Every supply contract shall contain the following clause:

Domestic preference. ARTICLE . less the head of the department or independ-ent establishment concerned shall determine It to be inconsistent with the public interest, or the cost to be unreasonable, only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States shall be delivered pursuant to this contract, except as noted in the specifications and/or other papers hereto attached. The provisions of this article shall not apply with respect to articles, materials, or supplies for use outside the United States, or if articles, materials, or supplies of the class or kind to be

used, or the articles, materials, supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

§ 118.05-85 Delays; damages; liquidated damages. (a) Every formal contract shall, and other contracts may, include a clause protecting the Government against delay in completion of the contract. Two alternates are available under delay clauses.

(1) The Government may have the work completed elsewhere and charge the defaulting contractor with the cost in-

volved, or

(2) The contract may prescribe a predetermined amount which will be assessed as liquidated damages for each calendar day of delay.

(b) The prescribed contract clauses covering delay and damages, for use in supply and construction contracts, are set forth in paragraphs (c), (d), and (e)

of this section.

(c) Delays; damages (supply contracts):

(1) The following clause shall be inserted in all formal supply contracts, and may be inserted in other supply contracts, when it is desired to protect against delay in deliveries by terminating the contract and obtaining the items elsewhere at the expense of the defaulting contractor. See paragraph (d) of this section for alternate clause involving assessment of liquidated damages for delay.

ARTICLE \_\_\_\_ Delays—Damages. If the contractor refuses or fails to make deliveries of the materials or supplies within the time specified herein, or any extension thereof, the Government may by written notice ter-minate the right of the contractor to proceed with deliveries of such part or parts thereof as to which there has been delay. In such event, the Government may purchase similar materials or supplies in the open market or secure the manufacture and delivery of the materials and supplies by contract or otherand the contractor and his sureties shall be liable to the Government for any excess cost occasioned the Government thereby: Provided. That the contractor shall not be charged with any excess cost occasloned the Government by the purchase of materials or supplies in the open market or under other contracts when the delay of the contractor in making deliveries is due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God or of the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor due to such causes unless the contracting officer shall determine that the materials or supplies to be furnished under the subcontract are procurable in the open market, if the contractor shall notify the contracting officer in writing of the cause of any such delay, within 10 days from the beginning thereof, or within such further period as the contracting officer shall, with the approval of the head of the department or his duly authorized representative, prior to the date of final settlement of the contract, grant for the giving of such notice. contracting officer shall then ascertain the facts and extent of delay, and his findings of fact thereon shall be final and conclusive on the parties hereto, subject only to appeal within 30 days by the contractor to the head of the department concerned or his duly authorized representative, whose decision on such appeal as to the facts of delay shall be final and conclusive on the parties hereto.

(2) The article prescribed above shall not be inserted in the contract if the contract contains an article covering Delays—Liquidated Damages as set forth in paragraph (d) of this section.

(d) Delays; liquidated damages (sup-

ply contracts):

(1) Every formal supply contract shall, and other supply contracts may, contain the following clause when it is desired to protect the Government against delay in deliveries by assessing liquidated damages for each calendar day of delay. See paragraph (c) of this section for alternate clause wherein delay in deliveries permits termination of contract. Whenever this clause is used, it is necessary to prescribe the rate of damages in the specifications or elsewhere in the contract.

Delays-Liquidated dam-ARTICLE ages. If the contractor refuses or falls to make delivery of the materials or supplies within the time specified herein, or any extension thereof, the actual damage to the Government for the delay will be impossible to determine, and in lieu thereof the contractor shall pay to the Government, as fixed, agreed, and liquidated damages for each calendar day of delay in making delivery, the amount as set forth in the specifications or accompanying papers, and the contractor and his sureties shall be liable for the amount thereof: Provided, however, That the Gov-ernment reserves the right to terminate the right of the contractor to proceed with deliveries or such part or parts thereof as to which there has been delay, and to purchase similar material or supplies in the open market or secure the manufacture and delivery thereof by contract or otherwise, charging against the contractor and his sureties any excess cost occasioned the Government thereby, together with liquidated damages accruing until such time as the Government may reasonably procure similar material or supplies elsewhere; Provided further, That the contractor shall not be charged with liquidated damages or any excess cost when the delay in delivery is due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God or of the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor due to such causes unless the contracting officer shall determine that the materials or supplies to be furnished under the subcontract are procurable in the open market, if the contractor shall notify the contracting officer in writing of the cause of any such delay, within 10 days from the beginning thereof, or within such further period as the contracting officer shall, with the approval of the head of the department or his duly authorized representative, prior to the date of final settlement of the contract, grant for the giving of such notice. The contracting officer shall then ascertain the facts and extent of the delay and extend the time for making delivery when in his judgment the findings of fact justify such an extension, and his findings of fact thereon shall be final and conclusive on the parties hereto, subject only to appeal, within 30 days, by the contractor to the head of the department concerned or his duly authorized representative, whose decision on such appeal as to the facts of delay and the extension of time for making delivery shall be final and conclusive on the parties hereto.

(2) The article prescribed above shall not be inserted in the contract, if the contract contains an article covering Delays—Damages as set forth in paragraph (c) of this section.

(e) Delays; damages (construction and repairs contracts): The following clause shall be inserted in all formal construction and repair contracts, and may be inserted in other contracts, when it is desired to protect against delay in completion of the work. The clause permits the contracting officer to either terminate the contract due to delay and have the work completed at the expense of the contractor, or to permit the contractor to continue the work subject to the assessment of liquidated damages for each calendar day of delay. It is necessary to prescribe the rate of liquidated damages in the specifications or contract:

Delays-Damages. If the ARTICLE contractor refuses or falls to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified herein, or any extension thereof, or fails to complete said work within such time, the Government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess cost oc-casioned the Government thereby. If the contractor's right to proceed is so terminated, the Government may take possession of and utilize in completing the work such materials, appliances, and plants as may be on the site of the work and necessary therefor. If the Government does not terminate the right of the contractor to proceed, the contractor shall continue the work, in which event it will be impossible to determine the actual damages for the delay and in lieu thereof the contractor shall pay to the Government as fixed, agreed, and liquidated damages for each calendar day of delay until the work is completed or accepted the amount as set forth in the specifications or accompanying papers and the contractor and his, sureties shall be liable for the amount thereof: Provided, That the right of the contractor to proceed shall not be terminated or the contractor charged with liquidated damages because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes, if the contractor shall within 10 days from the beginning of any such delay (unless the contracting officer, with the approval of the head of the department or his duly authorized representative, shall grant a further period of time prior to the date of final settlement of the contract) notify the contracting officer in writing of the causes of delay, who shall ascertain the facts and the extent of the delay and extend the time for completing the work when in his judg-ment the findings of fact justify such an extension, and his findings of fact thereon shall be final and conclusive on the parties hereto, subject only to appeal, within 30 days, by the contractor to the head of the department concerned or his duly authorized representative, whose decision on such appeal

as to the facts of delay and the extension of time for completing the work shall be final and conclusive on the parties hereto.

§ 118.05-90 Inspection. (a) Every formal construction contract shall, and other construction contracts may, contain the following clause:

Inspection. (1) All material and workmanship (if not otherwise designated by the specifications) shall be subject to inspection, examination, and test by Government inspectors at any and all times during manufacture and/or construction and at any and all places where such manufacture and/or construction are carried on. Government shall have the right to reject defective material and workmanship or require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefor, and the contractor shall promptly segregate and remove the rejected material from the prem-If the contractor fails to proceed at once with the replacement of rejected material and/or the correction of defective workmanship the Government may, by contract or otherwise replace such material and/or workmanship and charge the cost thereof to the contractor, or may terminate the right of the contractor to proceed as provided in the article Delays-Damages of this contract, the contractor and surety being liable for any damage to the same extent as provided in said article Delays-Damages for termination thereunder.

(2) The contractor shall furnish promptly without additional charge, all reasonable facilities, labor, and materials necessary for the safe and convenient inspection and test that may be required by the inspectors. All inspection and tests by the Government shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be as described in the specifications. The contractor shall be charged with any additional cost of inspection when material and workmanship is not ready at the time inspection is requested.

by the contractor.

(3) Should it be considered necessary or advisable by the Government at any time before final acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the contractor shall on request promptly furnish all necessary facilities, labor, and materials. If such work is found to be defective in any material respect, due to fault of the contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the actual cost of labor and material necessarily involved in the examination and replacement, plus 15 percent, shall be allowed the contractor and he shall, in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

(4) Inspection of material and finished article to be incorporated in the work at the site shall be made at the place of production, manufacture, or shipment, whenever the quantity justifies it, unless otherwise stated in the specifications; and such inspection and acceptance unless otherwise stated in the specifications, shall be final, except as regards latent defects, departures from specific requirements of the contract and the specifications and drawings made a part thereof, damage or loss in transit, fraud, or such gross mistakes as amount to fraud. Subject to the requirements contained in the preceding sentence, the inspection of material and workmanship for final acceptance as a whole or in part shall be made at the

(b) Every formal supply contract shall, and short form supply contracts may, contain the following clause:

Inspection. (1) All material and workmanship shall be subject to in-spection and test at all times and places, and when practicable, during manufacture. In case any articles are found to be defective in material or workmanship, or otherwise not in conformity with the specification requirements, the Government shall have the right to reject such articles, or require their correction. Rejected articles, and/or articles requiring correction, shall be removed by and at the expense of the contractor promptly after notice so to do. If the contractor falls to promptly remove such articles and to proceed promptly with the replacement and/or correction thereof, the Government may, by contract or otherwise replace and/or correct such articles and charge to the contractor the excess cost occasioned the Government thereby, or the Government may terminate the right of the contractor to proceed as provided in the Article Delays-Damages or in the Article Delays-Liquidated Damages of this contract, the contractor and surety being liable for any damage to the same extent as provided in said Articles Delays— Damages or Delays—Liquidated Damages for

terminations thereunder.

(2) If inspection and test, whether preliminary or final, is made on the premises of the contractor or subcontractor, the contractor shall furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient inspections and tests required by the inspectors in the performance of their duty. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay the work. Special and performance tests shall be as described in the specifications. The Government reserves the right to charge to the contractor any additional cost of inspection and test when articles are not ready at the time inspection is requested by

the contractor.

(3) Final inspection and acceptance of materials and finished articles will be made after delivery, unless otherwise stated. If final inspection is made at a point other than the premises of the contractor or a subcontractor, it shall be at the expense of the Government except for the value of samples used in case of rejection. Final inspection shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud. Final inspection and acceptance or rejection of the materials or supplies shall be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the Government for such materials or supplies as are not in accordance with the specifications. In the event public necessity requires the use of materials or supplies not conforming to the specifications, payment therefor shall be made at a proper reduction in price.

§ 118.05-95 Specifications and drawings. Every formal construction contract shall, and other construction contracts may, contain the following clause:

ARTICLE \_\_\_\_. Specifications and drawings. The contractor shall keep on the work a copy of the drawings and specifications and shall at all times give the contracting officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In any case of discrepancy in the figures, drawings or specifications, the matter shall

be immediately submitted to the contracting officer, without whose decision said discrepancy shall not be adjusted by the contractor, save only at his own risk and expense. The contracting officer shall furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

§ 118.05-100 Technical material. When the contract is for technical material to be specifically manufactured, the contracting officer may, in his discretion, insert the following clause in the contract:

ARTICLE \_\_\_\_. Technical material. No subcontract shall be made by the contractor with any other party for furnishing any of the completed or substantially completed articles, spare parts, or work herein contracted for without the written approval of the contracting officer.

§ 118.05-105 Materials and workmanship. Every formal construction contract shall, and other construction contracts may, contain the following clause:

... Materials and workmanship, Unless otherwise specifically provided for in the specifications, all workmanship, equip-ment, materials, and articles incorporated in the work covered by this contract are to be the best grade of their respective kinds for the purpose. Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, the contracting officer shall decide the question of equality. The contractor shall furnish to the contracting officer for his approval the name of the manufacturer of machinery, mechanical and other equipment which he contemplates incorporating in the work, together with their performance capacities and other pertinent information. When required by the specifications, or when called for by the contracting officer, the con-tractor shall furnish the contracting officer for approval full information concerning the materials or articles which he contemplates incorporated in the work. Samples of materials shall be submitted for approval when so directed. Machinery, equipment, ma-terials, and articles installed or used without such approval shall be at the risk of subsequent rejection. The contracting officer may require the contractor to remove from the work such employee as the contracting officer deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed by the contracting officer to be contrary to the public interest.

§ 118.05-110 Assignment of claims, Every contract in excess of \$1,000 shall contain the following clause:

ARTICLE \_\_\_\_. Assignment of claims. (1) Except as otherwise provided in this Article, no claim under this contract shall be assigned.

(2) If this contract is not classified as "Top Secret", "Secret" or "Confidential" and if it provides for payments aggregating \$1,000 or more, claims for monies due or to become due the Contractor from the Government under this contract may be assigned, and may thereafter be further assigned, to a bank, trust company, or other financing institution, including any Federal lending agency, pursuant to the provisions of the Assignment of Claims Act of 1940 (Public Law No. 811, 76th Cong.).

(3) In no event shall copies of any plans, specifications, or other similar documents, relating to work under this contract and marked "Top Secret," "Secret," "Confidential," or "Restricted," be furnished to any assignee of any claim arising under this con-

tract or to any other person not entitled to receive the same.

§ 118.05-115 Liens. When contracts provide for partial payments as the work progresses the following condition shall form part of the contract:

.. Liens. Any and all partial ARTICLE ... or advance payments made hereunder shall be secured, when made, by lien in favor of the Government upon the articles, materials, and other property acquired for or allocated to the performance of this contract, and upon such part of any mass of property not specifically allocated as represents the proportion of the total mass to be allocated to this contract, except to the extent that the Government, by virtue of any other provisions of this contract or otherwise, shall have valid title to such articles, materials, or other property as against other creditors of the contractor. Said lien shall be paramount to all other liens, pursuant to the provisions of the Act approved August 22, 1911 (37 Stat. 32) (34 U.S. C. 582).

§ 118,05-120 Eight-hour law. The Eight-Hour Law (Act of 19 June, 1912) (37 Stat. 137), requires that in every contract to which it is applicable, a provision must be inserted that no laborer or mechanic doing any part of the work contemplated by the contract in the employ of a contractor or any subcontractor shall be required or permitted to work more than 8 hours in any one calendar day upon such work unless such mechanic or laborer is compensated for all hours worked in excess of 8 hours in any one calendar day at not less than 11/2 times the basic rate of pay.

(b) The law applies to contracts which may require or involve the employment of laborers or mechanics by the prime contractor or any subcontractor, with the

following exceptions:

(1) Supply contracts involving amounts in excess of \$10,000, which are subject to the provisions of the Walsh-Healy Act.

(2) Contracts for transportation by land or water, or for the transmission of

intelligence.

(3) Contracts for such materials or articles as may be bought in the open market, whether made to conform to particular specifications or not. This exception has been interpreted to apply to contracts for materials and articles of the kind usually manufactured in standard forms, supplied to the trade generally, usually found in stock, and bought from dealers in the open market, or general market, as distinguished from other materials and articles which are not usually bought in the open market, but are usually ordered to be made.

(c) In every contract involving the employment of laborers and mechanics, subject to the exceptions set forth above, the following clause shall be inserted:

Eight-Hour Law-Overtime n. No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than 8 hours in any one calendar day upon such work at the site thereof, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this article. The wages of every laborer and mechanic employed by the contractor or any

subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day and work in excess of the eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each viola-tion of the requirements of this article a penalty of five dollars shall be imposed upon the contractor for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without recelving compensation in accordance with this article, and all penalties thus imposed shall be withheld for the use and benefit of the Government: Provided, That this stipulation shall be subject in all respects to the exceptions and provisions of U. S. C., Title 40, Sections 321, 324, 325, 325a and 326, relating to hours of labor as in part modified by the provisions of Section 303 of Public Act No. 781, 76th Congress approved September 9, 1940, relating to compensation for overtime.

§ 118.05-125 Convict labor. (a) The public policy as to the use of convict labor in connection with Coast Guard contracts is set forth in the act of 23 Feb. 1887 (24 Stat. 411; 18 U. S. C. 708, 709), and Executive Order of 18 May, 1905, which pro-vides in substance that all contracts shall, unless otherwise provided by law, contain a stipulation forbidding, in the performance of such contracts, the employment of persons undergoing sentences of imprisonment at hard labor which have been imposed by courts in the several States, Territories, or Municipalities having criminal jurisdiction.

(b) The basic law applies to all Coast Guard contracts except those for the purchase of items manufactured, or services rendered, by the Federal Prison In-

dustries, Inc.

(c) All contracts, except those to which the prohibition against use or employment of convict labor is clearly inapplicable, shall contain the following clause:

ARTICLE ..... Convict labor. The Contractor shall not employ any person undergoing sentence of imprisonment at hard labor.

§ 118.05-130 Nondiscrimination employment. Every contract shall contain the following clause:

ARTICLE ..... Nondiscrimination ... ployment. work under this contract shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor shall include an identical provision in all of its subcontracts. For the purpose of this Article, subcontracts shall include all purchase orders and agreements to perform all or any part of the work, or to make or furnish any article, required for the performance of this contract, except purchase orders or agreements for the furnishing of standard commercial articles or raw materials.

§ 118.05-135 Walsh-Healey Act. (a) The Walsh-Healey Act applies to contracts (but not subcontracts) for the manufacture or furnishing of materials, supplies, articles and equipment in excess of \$10,000. It also applies to work done directly by contracting firms under contracts for the construction, alteration, furnishing or equipping of vessels (not to manufacture or furnishing of materials or equipment to such firms).

(b) Rulings and Interpretations, Walsh-Healey Public Contracts Act, issued by the Department of Labor, set forth in some detail the coverage of the Walsh-Healey Act. These regulations are changed from time to time by regulations, exceptions, variations, tolerances, determinations and exemptions issued by the Secretary of Labor. Contracts subject to the act shall contain certain stipulations, broadly summarized as follows: (1) Contractor is manufacturer or dealer, (2) employees will receive minimum wage fixed by the Secretary of Labor (not applicable where no minimum wage has been fixed), (3) work period will be an 8 hour day, a 40 hour week (but overtime employment allowed at overtime rates and stipulation is not applicable where contractor has made 1,000 or 2,000 hour contract under Wage-Hour Law), (4) no employment of convicts, or females under 18, or males under 16, and (5) no unsanitary or hazardous conditions of employment (applies also to subcontracts). By the order of the Secretary of Labor the stipulations may be inserted in Government contracts by reference.

(c) The act does not apply to contracts:

(1) For commodities which are perishable (e. g., dairy and livestock products, etc.).

(2) For agricultural products proc-

essed for first sale by producers.

(3) For carriage of freight or personnel by carriers where state or federal tariff rates apply.

(4) With radio, telegraph, telephone

or cable companies.

(5) For public utility services, including electric light and power, water, steam and gas.

(6) For construction, alteration or repair of public works or public buildings (other than vessels).

(7) Exclusively for personal services (but not where personal services are incidental to, or an integral part of, the manufacture or furnishing of a commodity).

(8) For rental of real property.

(9) Which are to be performed outside the geographic limits of the United States, its territories and the District of Columbia, except where such performance requires a shipment from within such geographic limits. Contracts to be performed in the United States, the District of Columbia, Alaska, and Hawaii are subject to the act.

(d) All contracts subject to the act shall contain the following clause:

ARTICLE ..... Walsh-Healey Public Contracts Act. There are hereby incorporated by reference the representations and stipulations as set forth in Regulations issued by the Secretary of Labor pursuant to the Walsh-Healey Public Contracts Act (Public Act No. 846, 7th Cong.), such representations and stipulations being subject to all applicable regulations, exceptions, variations, tolerances, determinations, and exemptions of the Sec-retary of Labor which are now or may hereafter be in effect.

§ 118.05-140 Davis-Bacon Act. (a) The act applies to contracts over \$2,000 for construction, alteration or repair of public buildings or public works which involve the employment of mechanics and laborers directly upon the work site.

(b) The following contracts are not covered by the act:

 Contracts for construction, alteration, or repair of naval vessels.

(2) Contracts for maintenance or repair work by crews employed on a more or less permanent basis to keep buildings or equipment in workable condition.

(3) Contracts for demolition of struc-

tures.

- (c) A general rule which may be employed by contracting officers in the negotiation of contracts is that a contract is subject to the provisions of the Davis-Bacon Act, if the following conditions exist:
- The contract provides for the construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the United States.
- (2) The work under the contract will be performed within the geographical limits of the States of the Union, the Territory of Alaska, the Territory of Hawali, or the District of Columbia.

(3) The contract will require or involve the employment of mechanics

and/or laborers.

(4) The amount involved is in excess of \$2,000.

(5) The work under the contract will be performed at a particular site or place, the location of which is known to the Coast Guard at the time the specifications for the contract are advertised.

(d) Predetermination of wage rates. The act requires as to every contract to

which it applies;

(1) That a scale of minimum wages for every class of mechanic or laborer employed shall be set out in the specifications (in cases where specifications are advertised for bids). Prior to solicitation of bids, the contracting officer will request Comdt. (ECV) to furnish appropriate predetermination of wage rates to be contained in the contract.

(2) That a minimum wage scale must be included in the contract together with the stipulation that the same will be observed in the execution of the contract.

(3) The inclusion of certain additional provisions set forth herein for the administration and enforcement of the required stipulations.

(e) Contract Clause. All contracts subject to the act shall contain the following clause:

AETICLE ...... Rate of wages. (In accordance with the act of August 30, 1935, 49 Stat. 1011, as amended by the act of June 15, 1940, 54 Stat. 399 (U. S. Code, title 40, sec. 276a and 276a-1), this article shall, apply if the contract is in excess of \$2,000 in amount and is for the construction, alteration, and/or repair, including painting and decorating, of a public building or public work within the geographical limits of the States of the Union, the Territory of Alaska, the Territory of Hawaii, or the District of Columbia).

(1) The contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage

rates not less than those stated in the specifications, regardless of any contractual rela-tionship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics; and the scale of wages to be paid shall be posted by the contractor in a prominent and easily ac-cessible place at the site of the work. The contracting officer shall have the right to withhold from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractors, or their agents.
(2) In the event it is found by the con-

(2) In the event it is found by the contracting officer that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the Government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and prosecute the work to completion by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

(f) There will be contained in each contract subject to the act a clause substantially as follows:

The minimum wages to be paid laborers and mechanics on this project, as determined by the Secretary to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the pertinent locality, are as follows:

Classification of laborers and mechanics Minimum rates of wages per hour

While the wage rates shown are the minimum hourly rates required by the specifications to be paid during the life of the contract, it is the responsibility of bidders to inform themselves as to the local labor conditions such as the length of workday and workweek, overtime compensation, health and welfare contributions, labor supply, and prospective changes or adjustment of wage rates. The contractor shall abide by and conform to all applicable laws, executive orders, rules, regulations, and orders of Federal agencies authorized to pass upon and determine wage rates. No increase in contract price shall be allowed or authorized on account of payment of wage rates in excess of those listed herein.

(g) Any class of laborers and mechanics not listed in the preceding paragraph, who may be employed on the contract, shall be classified or reclassified in conformance with the foregoing schedule by mutual agreement between the contractor and class of labor concerned, subject to the prior approval of the contracting officer. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question, accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for final determination.

§ 118.05-145 Copeland ("Kickback")
Act. (a) The act provides that whoever shall induce any persons employed
in work subject to the act to give up any
part of the compensation to which he
is entitled under his contract of employment by force, intimidation, threat of
procuring dismissal from such employment or any other manner whatsoever
shall be fined not more than \$5,000 or
imprisoned not more than \$ years, or
both.

(b) Generally, the act applies to contracts and subcontracts regardless of amount for the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States.

(c) The act does not apply to supply contracts, such contracts ordinarily being subject to the Walsh-Healey Act where the amount is in excess of \$10,000; nor does it apply ordinarily to installation or maintenance work done for the account of the Government in connection with and as an incident to supply contracts.

(d) The act applies substantially to the same contracts as the Davis-Bacon Act except that the minimum limitation is not applicable to the Copeland Act.

(e) Weekly affidavit required:

 Each contractor or subcontractor is required to furnish each week a sworn affidavit with respect to the wages paid each of its employees.

(2) Each affidavit shall be delivered to the contracting officer within seven days after the regular payment date of the

pay-roll period.

(3) Affiadvits received from contractors and subcontractors shall be accumulated by the contracting officer or the contracting agency on a quarterly basis for the periods ending March 31, June 30, September 30, and December 31. At the ends of such quarterly periods, the accumulated affidavits shall be forwarded directly to the Office of the Solicitor, United States Department of Labor, Washington 25, D. C.

(f) All contracts subject to the act shall contain the following clause:

ABTICLE \_\_\_\_\_ Nonrebate of wages. The contractor shall comply with the regulations of the Secretary of Labor pursuant to the act of June 13, 1934, 48 Stat. 948 (U. S. C., title 40, secs. 276b and 276c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of affidavita required of subcontractors thereunder, except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirements thereof.

§ 118.05-150 Guaranty. Guaranty provisions, as prescribed below, may be included in supply contracts where such provisions are deemed desirable by the contracting officer. The guaranty period shall ordinarily be for a period of not more than one year, preferably for 90 days or 6 months. The approval of such provisions shall not be construed as prohibiting the use of performance guaranties or other special guaranty provisions:

ARTICLE \_\_\_\_ Guaranty. The contractor guarantees that at the time of delivery thereof, the articles provided for under this contract will be free from any defects in material or workmanship and will conform to the requirements of this contract. Notice of any such defect or nonconformance shall be given by the Government to the Contractor within \_\_\_\_\_ (insert period covered by guaranty) of the delivery of the defective or nonconforming article. If required by the Government within a reasonable time after such notice, the Contractor shall with all possible speed correct or replace the defective or nonconforming article or part thereof. When such correction or replacement requires transportation of the article or part thereof, shipping costs, not exceeding usual charges, from the delivery point to the Contractor's plant and return shall be borne by the Contractor; the Government shall bear all other shipping costs. This guaranty shall then continue as to corrected or replaced articles or, if only parts of such articles are corrected or replaced, to such corrected or replaced parts, until

(insert period covered by guaranty) after the date of redelivery. If the anty) after the date of redelivery. Government does not require correction or replacement of a defective or nonconforming article, the Contractor, if required by the contracting officer within a reasonable time after the notice of defect or nonconformance, shall repay such portion of the contract price of the articles as is equitable in the circumstances.

§ 118.05-155 Taxes. (a) The following clause is prescribed to cover contractual problems relating to Federal, State, and local taxes:

ARTICLE .... Federal, State and local taxes. (1) Except as may be otherwise provided in the Schedule, the prices stated herein include all applicable Federal taxes in effect at the date of this contract and incurred in the performance of this contract.

(2) If, (a) after date of this contract, the Federal Government shall impose or increase any duty or impost, or any excise, sales, use, or gross receipts tax, or any other tax directly applicable to the completed articles or work covered hereby or to the materials used in the manufacture or production of such completed articles or work, or directly upon the importation, production, processing, manufacture, construction, sale or use of such articles, work or materials, and (b) the Government, at the request of the Contractor, does not issue to the Contractor a tax exemption certificate or furnish other proof of exemption with respect to such tax, and (c) the Contractor is required by operation of law or by specific contractual obligations to bear the burden of such tax, the prices stated herein shall be increased accordingly. If, by operation of law or other-wise, the Contractor is relieved in whole or in part from the payment of any tax included in the prices stated herein or from bearing its burden, the prices stated herein shall be correspondingly reduced. Invoices or vouchers covering any increase or reduction in price resulting from the application of this Article shall state the amount thereof, as a separate added or deducted item, identifying the particular tax imposed or increased or reduced or eliminated.

(3) Nothing contained in this Article shall be applicable to impositions, increases, reductions or eliminations, after the date of this contract, of Federal transportation taxes, employment (or Social Security) taxes, income taxes, income surtaxes, excess-profits taxes, declared value excess-profits taxes, capital stock taxes, or such other taxes as are not contemplated by paragraph (2) of this article.

(4) The prices stated herein exclude any State or local sales, use or other tax directly applicable to the completed articles or work covered hereby. Upon request of the contractor, the Government shall furnish, for submission to the State or local taxing authorities, a certificate or similar evidence to assist the Contractor in attempting to obtain exemption from any such tax from which the Contractor or the transaction which is the subject of this contract is exempt.

(b) In the event that the clause listed in paragraph (a) of this section is not acceptable to the contracting parties, the case may be referred to the Commandant (FS).

§ 118.05-160 Transportation of freight and passengers. (a) The Motor Carrier Act of 1935 vests in the Interstate Commerce Commission jurisdiction over commercial transportation of passengers and property by motor carrier in interstate and foreign commerce.

(b) Contracts covering such transportation shall contain the following

ARTICLE \_\_\_\_ Certificate of authority, Prior to execution of the contract the Contractor must furnish to the contracting officer a certificate of the Contractor's authority to operate as a motor carrier under the Motor Carrier Act, 1935.

(c) The certificate furnished by the contractor shall be forwarded by the contracting officer to the Interstate Commerce Commission, Bureau of Motor Carriers, Washington, D. C. The fact that the certificate has been so furnished shall be noted in the contract.

§ 118.05-165 Lay days. Every contract covering drydocking or hauling out of the water of vessels incident to repair work shall contain the following clause:

ARTICLE \_\_\_\_\_. Lay days. (1) It is understood and agreed that no cost for lay days shall be assessed against the Government until all accepted items of basic contract for which a fixed-price was established by the contractor and for which docking of the vessel was required for accomplishment have been completed to the satisfaction of the Government.

(2) It is understood and agreed that days of hauling out and floating, whatever the hour, shall not be counted as lay days, and that days when no work is performed by the contractor shall not be counted as lay days. Lay days will be paid by the Government when the vessel remains on the drydock or marine rallway by contract change order involving work in addition to the basic contract.

#### PART 120-BONDS

SUBPART 120.01-BID BONDS

GENERAL PROVISIONS

120.01-1 Purpose

120.01-2 Form of guaranty.

120.01-3 Custody and return of bid bonds.

SUBPART 120.03—PERFORMANCE AND PAYMENT BONDS

#### GENERAL PROVISIONS

120.03-1 Purpose.

120.03-1 Purpose.
120.03-2 Requirement in connection with formal contracts for construction work.

120.03-3 Requirement in connection with supply contracts.

120.03-4 Penal sum of bonds.

120.03-5 Standard forms to be used.

120.03-6 Contracting officers authorized to examine and approve bonds.

120.03-7 Filing of bonds. 120.03-8 Consents of surety.

AUTHORITY: \$\frac{1}{2} 120.01-1 to 120.03-8 issued under 62 Stat. 21; 41 U. S. C. Sup. II 151-161,

#### SUBPART 120.01-BID BONDS

#### GENERAL PROVISIONS

§ 120.01-1 Purpose. The purpose of a bid bond (guaranty bond) is to assure that the bidder will execute a contract in the event of acceptance of his bid. A bid bond may be required at the discretion of the contracting officer when proposals involving formal contracts are solicited. When bid bonds (or guaranties) are required, they shall be taken in the penal sum of 5% of the bid price.

§ 120.01-2 Form of guaranty. The bid guaranty may be furnished in any one of the following forms:

(a) Standard Form 24 (Bid Bond) executed by an authorized bonding com-

pany (corporate surety).

(b) Standard Form 24 (Bid Bond) executed by two responsible persons (individual sureties). Neither the bidders themselves nor their employees, agents or partners will be accepted as sureties, except that officers of a corporation may act as guarantors for the corporation if qualified by their individual property interests, exclusive of the stocks and bonds of the corporation.

(c) A certified check made payable to

the Secretary of the Treasury.

(d) Bonds or notes of the United States in a sum equal at their par value to the required amount of the guaranty may be accepted in lieu of the guaranty if accompanied by a power of attorney in the form set out in the latest edition of Treasury Circular 154, authorizing the contracting officer to collect or sell such bonds in case of default.

§ 120.01-3 Custody and return of bid bonds. (a) United States bonds or notes, or certified checks, shall not be negotiated by field contracting officers, even in cases of default, except on directions from Headquarters. They will be retained in the custody of the contracting officer. They will not be taken into official Treasury accounts.

(b) Bonds, notes and checks which are received with bids which are rejected shall be returned to the unsuccessful bidders without delay after award of the

items covered by their bids.

(c) Bonds, notes and checks received with a bid which is accepted shall be retained until the covering contract and related surety bonds are in hand; then they shall be returned to the bidder without delay. However, if the bidder so requests, the bonds, notes or checks may be retained and be applied as part of the requisite performance bonds on his contract.

(d) When bonds, notes or checks are returned to bidders by hand to hand delivery, proper receipts will be obtained and filed in the contracting office; in other cases they shall be returned by registered mail and the receipt filed in the contracting office.

(e) A bid bond forms part of the pertinent bid and shall remain affixed to the

bid.

§ 120.01-4 Purchase against contractor's account in event of default; approval. Headquarters' approval shall be requested prior to making a purchase against a contractor's account in event of default.

SUBPART 120.03—PERFORMANCE AND PAYMENT BONDS

#### GENERAL PROVISIONS

§ 120.03-1 Purpose. The purpose of a Performance Bond is to assure that the contractor will perform the work required under the contract. The purpose of a Payment Bond is to protect employees and suppliers of materials engaged on a contract to assure that they will receive monies due them from the contractor.

§ 120.03-2 Requirement in connection with formal contracts for construction work. Performance bonds and payment bonds shall be required in connection with all formal contracts for construction work (including repairs and alterations) when the amount of the contract is for \$2,000 or more. This bond requirement for construction work applies to contracts for construction and/or repairs of vessels, shore structures, and aids to navigation.

§ 120.03-3 Requirement in connection with supply contracts. Performance bonds may also be required in connection with supply contracts, when in the judgment of the contracting officer such a bond is required to protect the interests of the Government. A payment bond may also be required by the contracting officer in connection with a supply contract. The use of performance and payment bonds in connection with supply contracts is discretionary with the contracting officer, although good business judgment requires that all contracts for amounts in excess of \$25,000 should be covered by bonding requirements.

§ 120.03-4 Penal sum of bonds. When performance and payment bonds are required in connection with a contract, they shall be in the penal sum as follows:

(a) Performance bonds. In such amount as in the exercise of sound judgment of the contracting officer will adequately protect the Government. However, performance bonds for construction contracts shall be in the penal sum fixed for payment bonds.

(b) Payment bonds. (1) 50% of the contract price where the contract is for \$1,000,000 or less.

(2) 40% of the contract price where the contract exceeds \$1,000,000 but is less than \$5,000,000.

(3) \$2,500,000 where the contract price is \$5,000,000 or more.

§ 120.03-5 Standards forms to be used. All performance bonds will be executed on Standard Form No. 25, and 211 payment bonds shall be executed on Standard Form No. 25-A.

No. 41--5

§ 120.03-6 Contracting officers authorized to examine and approve bonds. (a) Upon receipt of a bond given in support of a contract, the contracting officer shall ascertain that the bond tendered is in the penal sum required and that it properly describes the contract in support of which it was given. The contracting officer shall exercise caution to ascertain that the attorneyin-fact who executes a bond furnishes evidence to support his authority to execute the obligation. It is not necessary to refer the bond to Headquarters for approval prior to execution of the contract, provided the contracting officer makes the required examination as to sufficiency of amount, contract description, and authority of signature. Contracting officers will immediately report each bond taken in support of a contract to the Comdt. (FS-P) by letter containing the following information:

Name of principal
Contract description
Bond numbers
Penalty of payment bond
Date bond effective
Premium rate per \$1,000
Name and location of projects
Contract number
Penalty of performance bond
Name of surety
Premiums
Original of bond attached to
Contract (state Yes or No)

(b) Contracting officers or their representatives shall also report to Head-quarters all cases where a call or demand was made upon a surety or where a contractor's delay or default was called to the attention of a surety.

(c) In some instances it may be possible to prevent or avoid a contractor's default and the delays incident thereto by advising the surety of a contractor's tardiness in performance. All cases of tardiness on contracts in support of which a bond has been taken shall be called promptly to the attention of Headquarters.

§ 120.03-7 Filing of bonds. Executed bonds shall be attached to the related contract and shall be forwarded to Headquarters as a part of the contract in accordance with the procedure prescribed in § 118.03-15. Upon receipt at Headquarters, the bonds are referred to the Section of Surety Bonds, Treasury Department, for review prior to submission to the General Accounting Office.

§ 120.03-8 Consents of surety. (a) Care should be exercised in the execution of any amendment, modification or supplement to a contract which has been bonded to ascertain whether such amendment, modification or supplement will effect a release of the surety or is not included within the coverage of the bond, in either of which events the consent of the surety to such amendment, modification or supplement shall be obtained.

(b) Where consents of surety are necessary, they should be obtained in substantially the following form: Consent of surety is hereby given to the

(Description of amendment, modification, or supplement to which consent is given) and the surety agrees that its bond or bonds shall apply and extend to the contract as amended, modified or supplemented thereby.

> [SEAL] MERLIN O'NEILL, Vice Admiral, U. S. Coast Guard, Commandant.

[F. R. Doc. 50-1696; Filed, Mar. 1, 1950; 8:50 a. m.]

#### TITLE 49—TRANSPORTATION

#### Chapter I—Interstate Commerce Commission

PART 123—FREIGHT COMMODITY STATISTICS

CARRIERS BY WATER

At a session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the 20th day of February A. D. 1950.

The matter of freight commodity statistics of carriers by water being under

consideration,

It is ordered, That the order issued under date of November 25, 1946, in the matter of freight commodity statistics, carriers by water (§§ 123.21 to 123.27), be, and it is hereby modified, effective January 1, 1950, by the elimination of § 123.22 thereof, and substituting the following section therefor:

§ 123.22 Items to be reported. For each commodity class named in Appendix I of the order dated November 25, 1946, the following items and subdivisions thereof are to be reported annually by each carrier by water defined in \$123.21, except shipments of less than 10,000 pounds which shall be reported in \$123.23 (b):

(a) Number of tons (2,000 pounds) originated at Pacific Coast ports: (1) Terminated at Pacific Coast ports. (2) Terminated at Atlantic and Gulf Coast

ports

(b) Number of tons (2,000 pounds) originated at Atlantic and Gulf Coast ports: (1) Terminated at Atlantic and Gulf Coast ports. (2) Terminated at Pacific Coast ports. (3) Terminated at Great Lakes ports.

(c) Number of tons (2,000 pounds) originated at Great Lakes ports and terminated at Atlantic Coast ports.

(d) Number of tons (2,000 pounds) of all other traffic moving via: (1) Great Lakes. (2) Rivers.

Lakes. (2) Rivers.

(e) Total number of tons (2,000 pounds) of revenue freight carried; (1) Joint rail and water traffic. (2) All other traffic. (3) Total.

(f) Gross freight revenue (dollars):
(1) Joint rall and water traffic. (2) All other traffic, (3) Total.

(54 Stat. 944; 49 U. S. C. 913)

It is further ordered, That a copy of this order shall be served upon every Class A and Class B carrier by water, subject to the provisions of Parts I and III of the Interstate Commerce Act, and upon every receiver, trustee, executor, administrator, or assignee of any such carrier by water; and notice of this order shall be given to the general public by depositing a copy thereof in the office of the Secretary of the Commission at Washington, D. C., and by filing it with

the Director of the Division of the Federal Register.

Objections may be filed. Any interested party may on or before March 31, 1950, file with the Commission a written statement of reasons why the said modification should not become effective as provided above. Unless otherwise ordered after consideration of such objective after the said of the s

tions, the said modifications shall become effective as herein ordered.

By the Commission, Division 1.

[SEAL]

W. P. BARTEL,
Secretary.

[F. B. Doc. 50-1706; Filed, Mar. 1, 1950; 8:52 a. m.]

### PROPOSED RULE MAKING

### FEDERAL TRADE COMMISSION

I 16 CFR, Part 62 1

[File No. 21-120]

COMMERCIAL COLD STORAGE INDUSTRY

NOTICE OF HOLDING OF TRADE PRACTICE CONFERENCE

Notice is hereby given that a trade practice conference, under the auspices of the Federal Trade Commission, will be held for the Commercial Cold Storage Industry in the Congress Hotel, Chicago, Illinois, March 23, 1950, commencing at 10 a. m., c. s. t.

All persons, firms, corporations and organizations engaged in the business of renting, leasing or otherwise providing refrigerated storage space for foods and other products, issuing warehouse receipts for such products, and in supplying services and facilities in connection with such storage, are cordially invited to attend or send representatives to the conference and to take part in the proceedings.

The conference and further proceedings in the matter will be directed toward the eventual establishment and promulgation by the Commission of trade practice rules for the industry under which unfair methods of competition, unfair or deceptive acts or practices, and other trade abuses, may be eliminated and prevented,

Issued: February 27, 1950.

By direction of the Commission.

[SEAL]

D. C. DANIEL, Secretary.

[F. R. Doc. 50-1701; Filed, Mar. 1, 1950; 8:51 a. m.]

### NOTICES

### DEPARTMENT OF THE INTERIOR

**Bureau of Land Management** 

NEVADA

CLASSIFICATION ORDER

FEBRUARY 10, 1950.

1. Pursuant to the authority delegated to me by the Director, Bureau of Land Management, by Order No. 319 dated July 19, 1948 (43 CFR 50.451 (b) (3), 13 F. R. 4278), I hereby classify under the Small Tract Act of June 1, 1938 (52 Stat. 609), as amended July 14, 1945 (59 Stat. 467, 43 U. S. C. section 682a), as hereinafter indicated, the following described land in the Nevada land district, embracing approximately 320 acres.

NEVADA SMALL TRACT CLASSIFICATION No. 50

For lease and sale for homesites only:

T. 22 S., R. 61 E., M. D. M., Sec. 33, W ½.

The land is situated in Clark County, Nevada, 12 miles south of the City of Las Vegas, Nevada, Las Vegas is one of the largest towns in the State of Nevada and has all of the usual facilities, such as schools, churches, hospitals, business establishments, etc. The land is adjacent to the main Las Vegas-Los Angeles highway. It is in an area famous for recreational activities, and the climate is considered ideal from a winter resort standpoint. Summer temperatures are quite high.

2. As to applications regularly filed prior to 9:30 a. m., August 29, 1949, and are for the type of site for which the land is classified, this order shall become effective upon the date it is signed.

3. As to the land not covered by applications referred to in paragraph 2, this order shall not become effective to permit leasing under the Small Tract Act until 10:00 a.m., April 14, 1950. At that time such land shall, subject to valid existing rights, become subject to application as follows:

(a) Ninety-day preference period for qualified veterans of World War II from 10:00 a.m., April 14, 1950, to the close of business on July 13, 1950.

(b) Advance period for veterans' simultaneous filings from 9:30 a. m., August 29, 1949, to 10:00 a. m., April 14, 1950.

4. Any of the land remaining unappropriated shall become subject to application under the Small Tract Act by the public generally, commencing at 10:00 a.m., July 14, 1950.

(a) Advance period for simultaneous nonpreference filings from 9:30 a. m., August 29, 1949, to 10:00 a. m., July 14, 1950

5. Applications filed within the periods mentioned in paragraphs 3 (b) and 4 (a) will be treated as simultaneously filed.

A veteran shall accompany his application with a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his branch of the service which shows clearly his honorable discharge as defined in § 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Per-

sons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

6. All of the land will be leased in tracts of approximately 5 acres, each being approximately 330 by 660 feet, the longer dimension to extend east and west.

7. Preference right leases referred to in paragraph 2 will be issued for the land described in the application irrespective of the direction of the tract, provided the tract conforms to or is made to conform to the area and the dimension specified in paragraph 6.

8. Where only one five-acre tract in a ten-acre subdivision is embraced in a preference right application, an application for the remaining five-acre tract extending in the same direction will be accepted in order to fill out the subdivision notwithstanding the direction specified in paragraph 6.

9. Leases will be for a period of five years at an annual rental of \$5.00 payable for the entire lease period in advance of the issuance of the lease. Leases will contain an option to purchase clause at the appraised value of \$100.00 per tract, application for which may be filed at or after the expiration of one year from date the lease is issued.

10. Tracts will be subject to rights-ofway for road purposes and public utilities, as follows:

33 feet along the north side of the N½ NW¼.
33 feet along the east side of the E½W½.

33 feet along the south side of the S14 sw4.

161/2 feet along the west side of E1/2W1/2. 16 1/2 feet along the east side of W 1/2 W feet along the south side of N 1/2 NW 1/4.

S%NW%, N%SW%, 16% feet along the north side of S%NW%.

N%SW%, 8%SW%.

Tracts along the west side of the subdivision will be subject to a 200-foot

State highway right-of-way.

Such rights-of-way may be utilized by the Federal Government, or the state, county or municipality in which the tract is situated, or by any agency thereof. The rights-of-way may, in the discretion of the authorized officer of the Bureau of Land Management, be definitely located prior to the issuance of the patent. If not so located, they may be subject to location after patent is issued.

11. All inquiries relating to these lands should be addressed to the Acting Manager, Nevada Land and Survey Office,

Reno, Nevada,

L. T. HOFFMAN. Regional Administrator.

[F. R. Doc. 50-1697; Filed, Mar. 1, 1950; 8:50 a. m.]

#### NEVADA

#### CLASSIFICATION ORDER

FEBRUARY 17, 1950.

1. Pursuant to the authority delegated to me by the Director, Bureau of Land Management, by Order No. 319 dated July 19, 1948 (43 CFR 50.451 (b) (3), 13 F. R. 4278), I hereby classify under the Small Tract Act of June 1, 1938 (52 Stat. 609), as amended July 14, 1945 (59 Stat. 467, 43 U. S. C. section 682a), as hereinafter indicated, the following described land in the Nevada land district, embracing approximately 80 acres,

NEVADA SMALL TRACT CLASSIFICATION NO. 51

For lease and sale for homesites only:

T. 21 S., R. 61 E., M. D. M., Sec. 24, N%NW%.

The land is situated approximately 3 miles south of the city limits of Las Vegas, Nevada, and can be reached over a State highway and thence by dirt road. The area is one that is used extensively for health and recreation and has an ideal winter climate.

2. As to applications regularly filed prior to 8:30 a. m., November 12, 1948, and are for the type of site for which the land is classified, this order shall become effective upon the date it is

signed.

3. As to the land not covered by applications referred to in paragraph 2, this order shall not become effective to permit leasing under the Small Tract Act until 10:00 a. m., April 21, 1950. At that time such land shall, subject to valid existing rights, become subject to application as follows:

(a) Ninety-day preference period for qualified veterans of World War II from 10: 00 a. m., April 21, 1950, to the close

of business on July 20, 1950.

(b) Advance period for veterans' simultaneous filings from 8:30 a. m., November 12, 1948, to 10:00 a. m., April

4. Any of the land remaining unappropriated shall become subject to application under the Small Tract Act by the public generally, commencing at 10:00 a. m., July 21, 1950.

(a) Advance period for simultaneous nonpreference filings from 8:30 a. m., November 12, 1948, to 10:00 a. m., July

21, 1950.

5. Applications filed within the periods mentioned in paragraphs 3 (b) and 4 (a) will be treated as simultane-

ously filed.

A veteran shall accompany his application with a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his branch of the service which shows clearly his honorable discharge as defined in § 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications my duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

6. All of the land will be leased in tracts of approximately 5 acres, each being approximately 330 by 660 feet, the longer dimension to extend north and south.

7. Preference right leases referred to in paragraph 2 will be issued for the land described in the application irrespective of the direction of the tract, provided the tract conforms to or is made to conform to the area and the dimension specified in paragraph 6.

8. Where only one five-acre tract in a ten-acre subdivision is embraced in a preference right application, an application for the remaining five-acre tract extending in the same direction will be accepted in order to fill out the subdivision notwithstanding the direction speci-

fied in paragraph 6.

9. Leases will be for a period of five years at an annual rental of \$5.00 payable for the entire lease period in advance of the issuance of the lease. Leases will contain an option to purchase clause at the appraised value of \$10.00 an acre, application for which may be filed at or after the expiration of one year from date the lease is issued.

10. Tracts will be subject to rights-ofway for access roads and public utilities

as follows:

33 feet along the north and west sides of the NWNWW

161/2 feet along the east side of NE1/4 NW1/4. 161/2 feet along the west side of NE1/4NW1/4. 161/2 feet along the east side of NW1/4NW1/4.

Such rights-of-way may be utilized by the Federal Government, or the State, county or municipality in which the tract is situated, or by any agency thereof. The rights-of-way may, in the discretion of the authorized officer of the Bureau of Land Management, be definitely located prior to the issuance of the patent. If not so located, they may be subject to location after patent is issued

11. All inquiries relating to these lands should be addressed to the Acting Manager, Nevada Land and Survey Office, Reno. Nevada.

> L. T. HOFFMAN, Regional Administrator.

[F. R. Doc. 50-1698; Filed, Mar. 1, 1950; 8:51 a. m.]

#### NEVADA

#### CLASSIFICATION ORDER

#### FEBRUARY 17, 1950.

1. Pursuant to the authority delegated to me by the Director, Bureau of Land Management, by Order No. 319 dated July 19, 1948 (43 CFR 50.451 (b) (3), 13 F. R. 4278). I hereby classify under the Small Tract Act of June 1, 1938 (52 Stat. 609), as amended July 14, 1945 (59 Stat. 467, 43 U. S. C. section 682a), as hereinafter indicated, the following described land in the Nevada land district, embracing approximately 80 acres,

NEVADA SMALL TRACT CLASSIFICATION No. 52

For lease and sale for homesites only:

T. 14 S., R. 66 E., M. D. M. Sec. 33, SW 1/4 NW 1/4. NW 1/4 SW 1/4.

The land adjoins the townsite of Moapa, in Clark County, Nevada, and is crossed by U. S. Highway 93. It is in a desert area devoid of water, and water for domestic use is obtained from tank cars hauled by the Union Pacific Railroad to the town of Moapa. The nearest town that provides schools, churches, etc., is Las Vegas, Nevada, approximately 52 miles distant.

2. As to applications regularly filed prior to 10:15 a. m., November 24, 1948, and are for the type of site for which the land is classified, this order shall become effective upon the date it is signed.

3. As to the land not covered by applications referred to in paragraph 2, this order shall not become effective to permit leasing under the Small Tract Act until 10:00 a. m., April 21, 1950. At that time such land shall, subject to valid existing rights, become subject to application as follows:

(a) Ninety-day preference period for qualified veterans of World War II from 10:00 a. m., April 21, 1950, to the close

of business on July 20, 1950.

(b) Advance period for veterans' simultaneous filings from 10:15 a. m., November 24, 1948, to 10:00 a. m., April 21, 1950.

4. Any of the land remaining unappropriated shall become subject to application under the Small Tract Act by the public generally, commencing at 10:00 a. m., July 21, 1950.

(a) Advance period for simultaneous nonpreference filings from 10:15 a. m., November 24, 1948, to 10:00 a. m., July

21, 1950.

5. Applications filed within the periods mentioned in paragraphs 3 (b) and 4 (a) will be treated as simultaneously filed.

A veteran shall accompany his application with a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his branch of the service which shows clearly his honorable discharge as defined in § 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Persons asserting preference rights, through set-tlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

6. All of the land will be leased in tracts of approximately 5 acres, each being approximately 330 by 660 feet, the longer dimension to extend north and

7. Preference right leases referred to in paragraph 2 will be issued for the land described in the application irrespective of the direction of the tract, provided the tract conforms to or is made to conform to the area and the dimension specified in paragraph 6.

8. Where only one five-acre tract in a ten-acre subdivision is embraced in a preference right application, an application for the remaining five-acre tract extending in the same direction will be accepted in order to fill out the subdivision notwithstanding the direction spectified in paragraph 6.

9. Leases will be for a period of five years at an annual rental of \$5.00 payable for the entire lease period in advance of the issuance of the lease. Leases will contain an option to purchase clause at the appraised value of \$50.00 per tract, application for which may be filed at or after the expiration of one year from date the lease is issued.

10. Tracts will be subject to rights-of-way not exceeding 33 feet in width along or near the edges thereof for road purposes and public utilities. Such rights-of-way may be utilized by the Federal Government, or the state, county or municipality in which the tract is situated, or by any agency thereof. The rights-of-way may, in the discretion of the authorized officer of the Bureau of Land Management, be definitely located prior to the issuance of the patent. If not so located, they may be subject to location after patent is issued.

U. S. Highway 93 crosses through the approximate center of the land east and west, and the tracts affected by this highway will be subject to the highway right-of-way which is 400 feet in width.

11. All inquiries relating to these lands should be addressed to the Acting Manager, Nevada Land and Survey Office, Beno, Nevada.

L. T. HOFFMAN, Regional Administrator.

[F. R. Doc. 50-1699; Filed, Mar. 1, 1950; 8:51 a. m.]

#### NEVADA

#### CLASSIFICATION ORDER

#### FEBRUARY 17, 1950.

1. Pursuant to the authority delegated to me by the Director, Bureau of Land Management, by Order No. 319 dated July 19, 1948 (43 CFR 50.451 (b) (3), 13 F. R. 4278), I hereby classify under the Small Tract Act of June 1, 1938 (52 Stat. 609), as amended July 14, 1945 (59 Stat. 467, 43 U. S. C. section 682a), as hereinafter indicated, the following described land in the Nevada land district, embracing approximately 160 acres,

NEVADA SMALL TRACT CLASSIFICATION No. 53

For lease for homesites only:

T. 22 S., R. 61 E., M. D. M. Sec. 16, SW1/4.

The land is situated in Clark County, Nevada, about 7 miles south of Las Vegas, one of the largest towns in the State. It can be reached over U. S. Highway 91. The land is desert in character. The area is one that is used extensively for health and recreational purposes.

2. As to applications regularly filed prior to 9:30 a.m., April 25, 1949, and are for the type of site for which the land is classified, this order shall become effective upon the date it is signed.

3. As to the land not covered by applications referred to in paragraph 2, this order shall not become effective to permit leasing under the Small Tract Act until 10:00 a.m., April 21, 1950. At that time such land shall, subject to valid existing rights, become subject to application as follows:

(a) Ninety-day preference period for qualified veterans of World War II from 10:00 a. m., April 21, 1950, to the close of business on July 20, 1950.

(b) Advance period for veterans' simultaneous filings from 9:30 a. m., April 25, 1949, to 10:00 a. m., April 21, 1950.

4. Any of the land remaining unappropriated shall become subject to application under the Small Tract Act by the public generally, commencing at 10:00 a. m., July 21, 1950.

(a) Advance period for simultaneous nonpreference filings from 9:30 a. m., April 25, 1949, to 10:00 a. m., July 21, 1950

5. Applications filed within the periods mentioned in paragraphs 3 (b) and 4 (a) will be treated as simultaneously filed.

A veteran shall accompany his application with a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his branch of the service which shows clearly his honorable discharge as defined in § 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated

statements in support thereof, setting forth in detail all facts relevant to their claims.

6. The land will be leased in tracts of approximately 2½ acres, each being approximately 330 by 330 feet, except that along the west side of the subdivision there will be a row of tracts 330 by 660 feet, the longer dimension of which will extend east and west which later tracts will be subject to a 200-foot highway right-of-way. This highway extends north and south along the western side of said subdivision.

7. Preference right leases referred to in paragraph 2 will be issued for the land described in the application irrespective of the direction of the tract, provided the tract conforms to or is made to conform to the area and the dimension specified in paragraph 6.

8. Leases will be for a period of five years at an annual rental of \$5.00 payable for the entire lease period in advance of the issuance of the lease.

9. Tracts will be subject to rights-ofway for road purposes and public utilities, as follows:

33 feet along the south side of the SW¼, 16½ feet along the north and east sides of SW¼,

16½ feet along the west side of the E½ E½SW¼, W½E½SW¾ and E½W½SW¾, 16½ feet along the east side of W½W½SW½ SW¼, E½W½SW¼ and W½E½SW¼.

SW14, E1/W1/2SW14 and W1/E1/2SW14, 161/2 feet along the south side of the N1/2 SW14.

16½ feet along the north side of the S½ SW¼.

Such rights-of-way may be utilized by the Federal Government, or the State, county or municipality in which the tract is situated, or by any agency thereof.

 All inquiries relating to these lands should be addressed to the Acting Manager, Nevada Land and Survey Office, Reno, Nevada.

L. T. HOFFMAN, Regional Administrator.

[F. R. Doc. 50-1700; Piled, Mar. 1, 1950; 8:51 a. m.]

#### DEPARTMENT OF AGRICULTURE

#### Production and Marketing Administration

RUSHVILLE LIVESTOCK COMMISSION CO.

#### NOTICE RELATIVE TO POSTED STOCKYARDS

Notice is hereby given that after inquiry and after consideration of all relevant matter presented pursuant to the notices of proposed posting and rule making published in the FEDERAL REGISTER September 15, 1949, November 22, 1949, November 25, 1949, and December 6, 1949 (14 F. R. 5653, 7185, 7236 and 7430), it has been ascertained by me, pursuant to section 302 of the Packers and Stockyards Act, 1921 (7 U. S. C. 202) that the stockyards named below are stockyards within the definition of that term contained in section 302 of said act and are, therefore, subject to the provisions of said act, and notice has been given to the owners of said stockyards and to the public by posting notice at said stockyards as

required by section 302 of said act. The names of the stockyards, their addresses and the dates on which notice was given are as follows:

Rushville Livestock Commission	
Co., Rushville, Nebr.	Jan. 11, 1950
Sloux County Live Stock Auc-	Jan. 10, 1950
tion, Harrison, Nebr Sidney Livestock Sales Pavilion,	Jan. 10, 1950
Sidney, Nebr	Jan. 10, 1950
Blair Livestock Sales Co., Blair,	and the second second
Nebr	Jan. 20, 1950
Spalding Livestock Market,	1000 1221022V
Spalding, Nebr	Jan. 27, 1950
Pender Livestock Sales Co., Pen- der, Nebr	Jan. 26, 1950
Ewing Livestock Market, Ewing,	Jan. 20, 1550
Nebr	Jan. 25, 1950
Burwell Livestock Market, Bur-	
well, Nebr	Jan. 26, 1950
Laurel Sales Co., Inc., Laurel	
Nebr	Jan. 24, 1950
Auction, Franklin, Nebr	Jan. 31, 1950
Hebron Livestock Commission	
Co., Hebron, Nebr	Jan. 30, 1950
Culbertson Sale Barn Co., Cul-	
bertson, Nebr	Feb. 2, 1950
Minden Livestock Sales Co.,	Feb. 1, 1950
Minden, Nebr	red. 1, 1900
Nebr	Feb. 6, 1950
B. & B. Commission Co., Ra-	The second
venna, Nebr	Feb. 8, 1950
Thedford Livestock Sales Co.,	and the reason
Thedford, Nebr	Feb. 7, 1950
Pawhuska Auction (formerly	Feb. 7, 1950

The Packers and Stockyards Act provides for specified time after the posting of notice at the stockyards for market agencies, dealers and stockyard owners to register and qualify for the operation of their businesses under that act and makes the stockyard subject to the provisions of that act after the posting of notice at the stockyard. There appears to be no good reason to defer the effective date of the foregoing notice in view of that fact. Therefore, it is determined that good cause exists to make this notice, and it shall be, effective upon publication in the FEDERAL REGISTER, subject to the provisions of the Packers and Stockyards Act.

Done at Washington, D. C., this 24th day of February, 1950.

[SEAL] PRESTON RICHARDS. Acting Director, Livestock Branch, Production and Marketing Administration.

[F. R. Doc. 50-1688; Filed, Mar. 1, 1950; 8.:48 a. m.)

#### CIVIL AERONAUTICS BOARD

[Docket No. 3719 et al.]

PIONEER AIR LINES, INC., ET AL.; CERTIFICATE RENEWAL CASE

NOTICE OF REOPENED HEARING

In the matter of a renewal and amendment of the temporary certificate of public convenience and necessity for route No. 64 held by Pioneer Air Lines, Inc.; and the temporary suspension, in part, of the certificate of public convenience and necessity for route No. 29 held by Continental Air Lines, Inc.; for route No. 9 held by Braniff Airways, Inc., and for route No. 4 held by American Airlines,

Notice is hereby given that pursuant to the Civil Aeronautics Act of 1938, as amended, particularly section 401 thereof, the above-entitled reopened proceeding is assigned for hearing on March 15, 1950 at 10:00 a. m., e. s. t., in Room E-214, Temporary Building No. 5, Sixteenth and Constitution Avenue NW., Washington, D. C., before Examiner James M. Verner.

The reopened hearing as ordered by the Civil Aeronautics Board is for the limited purpose of permitting Public Counsel to offer in evidence the appendices to his brief filed in support of exceptions to the report of the Examiner herein and of permitting cross-examination and the presentation of rebuttal testimony and exhibits solely with respect to such appendices.

For further details of the issues involved in this reopened proceeding the parties are referred to the various orders entered in this proceeding which are on file with the Civil Aeronautics Board.

Notice is further given that any person other than parties of record desiring to be heard in this reopened proceeding shall file with the Board on or before March 15, 1950, a statement setting forth issues of fact or law raised by the Board's order reopening this proceeding which he desires to controvert.

Dated at Washington, D. C., February 24, 1950.

By the Civil Aeronautics Board.

[SEAL]

M. C. MULLIGAN. Secretary.

[F. R. Doc. 50-1708; Filed, Mar. 1, 1950; 8:52 a. m.]

#### FEDERAL POWER COMMISSION

[Docket No. E-6255]

EMPIRE DISTRICT ELECTRIC CO.

ORDER POSTPONING HEARING

FEBRUARY 23, 1950.

The Commission having considered the telegraphic application of Empire District Electric Company, filed February 20, 1950, for a postponement of the hearing in the above entitled matter to enable the Company to prepare and submit supplementary data. The Commission orders:

The hearing now set to commence on February 27, 1950, be and the same is hereby postponed to a date to be hereafter fixed by the Commission,

Date of issuance: February 24, 1950. By the Commission.

J. H. GUTRIDE, Acting Secretary.

[F. R. Doc. 50-1689; Filed, Mar. 1, 1950; 8:50 a. m.]

[Docket Nos. E-6261, E-6262]

SOUTHWESTERN POWER ADMINISTRATION NOTICE OF ORDERS CONFIRMING AND

APPROVING RATE SCHEDULES

FEBRUARY 24, 1950.

Notice is hereby given that, on February 20, 1950, the Federal Power Commission issued its orders entered February 17, 1950, confirming and approving rate schedules in the above-designated matter.

J. H. GUTRIDE, Acting Secretary.

[F. R. Doc. 50-1682; Filed, Mar. 1, 1950; 8:47 a. m.]

[Docket Nos. G-655, G-1051, G-1019]

EL PASO NATURAL GAS CO.

NOTICE OF FINDINGS AND ORDER ISSUING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

FEBRUARY 24, 1950.

Notice is hereby given that, on February 23, 1950, the Federal Power Commission issued its findings and order entered February 21, 1950, issuing a certificate of public convenience and necessity in the above-designated matter.

[SEAL]

J. H. GUTRIDE, Acting Secretary.

[F. R. Doc. 50-1679; Filed, Mar. 1, 1950; 8:46 a. m.]

[Docket No. G-889]

EAST TENNESSEE NATURAL GAS CO.

NOTICE OF ORDER RELATING TO PIPE PUR-CHASE ORDERS AND CONSTRUCTION CON-TRACTS SUBMITTED IN RESPONSE TO COMMISSION'S ORDER ISSUING CERTIFICATE

FEBRUARY 24, 1950.

Notice is hereby given that, on February 23, 1950, the Federal Power Commission issued its order entered February 21, 1950, relating to pipe purchase orders and construction contracts submitted in response to Commission's order of February 2, 1948, published in the FEDERAL REGISTER on February 6, 1948 (13 F. R. 561), issuing certificate of public con-venience and necessity in the abovedesignated matter.

[SEAL]

J. H. GUTRIDE. Acting Secretary.

[F. R. Doc. 50-1676; Filed, Mar. 1, 1950; 8:46 a. m.]

[Docket No. G-889]

EAST TENNESSEE NATURAL GAS CO.

NOTICE OF ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVEN-IENCE AND NECESSITY

FEBRUARY 24, 1950.

Notice is hereby given that, on February 23, 1950, the Federal Power Commission issued its order entered February 21, 1950, further amending order of February 2, 1948, published in the FED-ERAL REGISTER on February 6, 1948 (13 F. R. 561), issuing certificate of public convenience and necessity in the abovedesignated matter.

[SEAL]

J. H. GUTRIDE. Acting Secretary.

[F. R. Doc. 50-1675; Filed, Mar. 1, 1950; 8:46 a. m.]

[Docket No. G-1148, G-1172]

PHILLIPS PETROLEUM CO. AND INDEPENDENT
NATURAL GAS CO.

ORDER CONSOLIDATING PROCEEDINGS

FEBRUARY 21, 1950.

On February 21, 1949, Independent Natural Gas Company (Independent) filed, at Docket No. G-1172, an application requesting permission of the Commission to abandon its Lodi Compressor Station in Cass County, Texas, and to discontinue its sale of gas to Arkansas Louisiana Gas Company (Arkansas Louisiana) from said compressor station under contract dated September 21, 1939, and designated as Independent's Rate Schedule FPC No. 2, as more fully set out in said application on file with the Commission and open to public inspection. Due notice of such application has been given, including publication in the FEDERAL REGISTER on March 5, 1949 (14 F. R. 1027).

On October 28, 1948, the Commission instituted an investigation of the natural gas operations of Phillips Petroleum Company (Phillips), which proceedings are designated as Docket No. G-1148.

On February 9, 1950, the Commission issued its "Order Specifying Issues and Fixing Date of Hearing" in Docket No. G-1148, ordering that a public hearing be held commencing at 10:00 a. m. c. s. t. on March 20, 1950, in the Federal Court Room, U. S. Post Office Building, Bartlesville, Oklahoma, respecting all matters and issues set forth in said order and in the Commission's order of investigation entered October 28, 1948. Due notice of said order of February 9, 1950, has been given, including publication in the Federal Register on February 15, 1950 (15 F. R. 831-832).

It appears from information submitted to the Commission in connection with Independent's application in Docket No. G-1172, and from information submitted to the Commission by its Staff in the investigation in Docket No. G-1148, that Independent has abandoned the operation and sale which is the subject of its application, and that Phillips now is, and has been for several months past, operating said Lodi Compressor Station and making sales and deliveries of natural gas to Arkansas Louislana under an interim contract between Phillips and Arkansas Louislana.

It further appears that Independent is a wholly-owned subsidiary of Phillips.

The Commission finds: Good cause exists for consolidating for purpose of hearing the proceedings in Docket No. G-1148 and Docket No. G-1172.

The Commission orders:

The proceedings in Dockets Nos. G-1148 and G-1172 be and the same hereby are consolidated for the purpose of hearing, said hearing to commence at the time and place heretofore fixed in the Commission's order issued February 9, 1950, in Docket No. G-1148.

Date of issuance: February 23, 1950.

By the Commission.

[SEAL]

J. H. GUTRIDE, Acting Secretary.

[F. R. Doc. 50-1680; Filed, Mar. 1, 1950; 8:46 a. m.] [Docket No. G-1156]

MICHIGAN-WISCONSIN PIPE LINE CO. AND MICHIGAN CONSOLIDATED GAS CO.

NOTICE OF ORDER ALLOWING FIRST REVISED SHEET NO. 1 TO INTERIM RATE SCHEDULE TO TAKE EFFECT

FEBRUARY 24, 1950.

Notice is hereby given that, on February 17, 1950, the Federal Power Commission issued its order entered February 17, 1950, allowing First Revised Sheet No. 1 to "Interim" Rate Schedule to take effect as of February 7, 1950, in the above-designated matter.

[SEAL

J. H. GUTRIDE, Acting Secretary.

[P. R. Doc. 50-1683; Filed, Mar. 1, 1950; 8:47 a. m.]

[Docket No. G-1214]

COLORADO INTERSTATE GAS CO.

NOTICE OF ORDER VACATING SUSPENSION AND ACCEPTING STATEMENT FOR FILING

FEBRUARY 24, 1950.

Notice is hereby given that, on February 23, 1950, the Federal Power Commission issued its order entered February 21, 1950, in the above-designated matter, vacating suspension of Colorado Interstate Gas Company FPC Gas Tariff, Original Volume No. 2, published in the FEDERAL REGISTER on November 10, 1949 (14 F. R. 6798), and accepting for filing the statement relative to provisions of contract dated October 15, 1931.

[SEAT.]

J. H. GUTRIDE, Acting Secretary.

[F. R. Doc. 50-1677; Filed, Mar. 1, 1950; 8:46 a. m.]

[Docket No. G-1272]

EAST TENNESSEE NATURAL GAS CO.

NOTICE OF ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

FEBRUARY 24, 1950.

Notice is hereby given that, on February 23, 1950, the Federal Power Commission issued its order entered February 21, 1950, amending order of November 15, 1949, published in the Federal Register on November 23, 1949 (14 F. R. 7114), issuing certificate of public convenience and necessity in the above-designated matter.

[SEAL]

J. H. GUTRIDE, Acting Secretary.

[F. R. Doc. 50-1678; Filed, Mar. 1, 1950; 8:46 a. m.]

[Docket No. G-1309]

CONSOLIDATED GAS UTILITIES CORP.

ORDER FIXING DATE OF HEARING

FEBRUARY 21, 1950.

On December 29, 1949, Consolidated Gas Utilities Corporation (Applicant), a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, filed an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, as amended, authorizing it to operate and utilize that portion of its transmission pipe line facilities extending from a point in The Elk City, Oklahoma Oil Field, Beckham County, Oklahoma, approximately 15 miles in a northerly direction to a point of connection with its 14-inch main transmission line in Roger Mills County, Oklahoma, and thence in a westerly direction to its Twitty Compressor Station in Wheeler County, Texas, for the purpose of rendering a natural gas transportation service to United Gas Pipe Line Company (United) in the transportation of natural gas from Elk City, Oklahoma oil field, to Applicant's Twitty Compressor Station in Wheeler County, Texas; and authorizing it to sell surplus gas to United

Temporary authorization to operate the requested facilities was granted by the Commission on January 5, 1950.

Applicant has requested that its application be heard under the shortened procedure provided for by § 1.32 (b) of the Commission's rules of practice and procedure; and no request to be heard or protest has been filed subsequent to the giving of due notice of the filing of the application, including publication in the Federal Register on January 13, 1950 (15 F. R. 224-225).

The Commission finds: This proceeding is a proper one for disposition under the provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

The Commission orders: (A) Pursuant to authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, as amended, and the Commission's rules of practice and procedure, a public hearing be held on March 6, 1950, at 9:30 a. m., e. s. t. in the Hearing Room of the Federal Power Commission. 1800 Pennsylvania Avenue NW., Washington, D. C., concerning the matters involved and the issues presented by such application: Provided, however, That the Commission may, after a non-contested hearing, forthwith dispose of the proceeding pursuant to the provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

 (B) Interested State commissions may participate as provided by §§ 1.8 and 1.37
 (f) of said rules of practice and pro-

Date of issuance: February 23, 1950. By the Commission.

[SEAL]

J. H. GUTRIDE, Acting Secretary.

[F. R. Doc. 50-1681; Filed, Mar. 1, 1950; 8:47 a. m.]

[Docket No. ID-897]

NEWELL A. CLARK

NOTICE OF AUTHORIZATION PURSUANT TO SECTION 305 (b) OF THE FEDERAL POWER ACT

FEBRUARY 24, 1950.

Notice is hereby given that, on February 23, 1950, the Federal Power Com-

mission issued its order entered February 21, 1950, in the above-designated matter, authorizing Applicant to hold certain positions pursuant to section 305 (b) of the Federal Power Act.

[SEAL]

J. H. GUTRIDE, Acting Secretary.

[F. R. Doc. 50-1674; Filed, Mar. 1, 1950; 8:46 a. m.]

#### GENERAL SERVICES ADMIN-ISTRATION

REVOCATION OF DELEGATION OF AUTHORITY TO SECRETARY OF DEFENSE

TARIFF NO. TRUNK LINE-CPA-R-1; ICC NO. 143

1. Pursuant to the provisions of sections 201 (a) (4) and 205 (d) and (e) of the Federal Property and Administrative Services Act of 1949, Public Law 152, 81st Congress, and pursuant to arrangements between officials of the Department of Defense and the General Services Administration, the authority delegated to the Secretary of Defense by Delegation of Authority dated January 20, 1950 (15 F. R. 468) to appear as witnesses and counsel for the executive agencies of the Federal Government in the matter of proposed Tariff No. Trunk Line CPAR-1; ICC No. 143 before the Interstate Commerce Commission hereby is revoked.

This revocation is effective February 23, 1950.

JESS LARSON, Administrator.

[F. R. Doc. 50-1693; Filed, Mar. 1, 1950; 8:50 a. m.]

### INTERSTATE COMMERCE COMMISSION

[S. O. 844, Special Directive 34A] CHESAPEAKE AND OHIO RAILWAY CO.

FURNISHING CARS FOR LOCOMOTIVE FUEL COAL TO DESIGNATED MINES ON ITS LINES

Upon further consideration of the provisions of Service Order No. 844 (14 F. R. 7765) and good cause appearing therefor:

It is ordered, That Special Directive No. 34 under Service Order No. 844 be, and it is hereby suspended effective 4:00 p. m., February 24, 1950.

A copy of this special directive shall be served on the Chesapeake and Ohio Railway Company through the Car Service Division of the Association of American Railroads and notice of this directive shall be given the public by depositing a copy in the office of the Secretary of the Commission, Washington, D. C., and by filing it with the Director of the Division of the Federal Register.

Issued at Washington, D. C., this 24th day of February A. D. 1950,

INTERSTATE COMMERCE COMMISSION, HOMER C. KING, Director, Bureau of Service.

[F. R. Doc. 50-1707; Filed, Mar. 1, 1950; 8:52 a. m.] [4th Sec. Application 24894] COAL FROM ARKANSAS TO CHICAGO, ILL.

#### APPLICATION FOR RELIEF

FEBRUARY 27, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: D. Q. Marsh, Agent, for and on behalf of carriers parties to his tariff I. C. C. No. 3763.

Commodities involved: Coal and articles taking same rates, carloads.

From: Points in Greenwood, Ark.,

To: Chicago, Ill.

Grounds for relief: Circuitous routes, Schedules filed containing proposed rates: D. Q. Marsh's tariff I. C. C. No.

3763, Supplement 89.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As pro-vided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL]

W. P. BARTEL, Secretary.

[F. R. Doc. 50-1702; Filed, Mar. 1, 1950; 8:51 a. m.]

[4th Sec. Application 24895]

ETHYLENE GLYCOL FROM PORT NECHES, TEX., TO TERRE HAUTE, IND.

APPLICATION FOR RELIEF

FEBRUARY 27, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: D. Q. Marsh, Agent, for and on behalf of carriers parties to his tariff I. C. C. No. 3721.

Commodities involved; Ethylene glycol. tank carloads.

From: Port Neches, Tex. To: Terre Haute, Ind.

Grounds for relief: Circuitous routes. Schedules filed containing proposed rates: D. Q. Marsh's tariff I. C. C. No.

3721, Supplement 134.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their in-

terest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL]

W. P. BARTEL, Secretary.

[F. R. Doc. 50-1703; Filed, Mar. 1, 1950; 8:51 a. m.]

[4th Sec. Application 24896]

IRON OR STEEL PIPE FROM WOOSTER, OHIO, TO SOUTHWEST

APPLICATION FOR RELIEF

FEBRUARY 27, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: D. Q. Marsh, Agent, for and on behalf of carriers partles to his tariff

I. C. C. No. 3748.

Commodities involved: Steel or wrought iron pipe and related articles, carloads.

From: Wooster, Ohio. To: Points in the Southwest.

Grounds for relief: Competition with rail carriers and circuitous routes.

Schedules filed containing proposed rates; D. Q. Marsh's tariff I. C. C. No. 3748, Supplement 55.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL]

W. P. BARTEL, Secretary.

[F. R. Doc. 50-1704; Filed, Mar. 1, 1950; 8:51 a. m.]

[4th Sec. Application 24897]

CLAY FROM SOUTH TO WESTERN TRUNK LINE TERRITORY

APPLICATION FOR RELIEF

FEBRUARY 27, 1950.

The Commission is in receipt of the above-entitled and numbered applica-

tion for relief from the long-and-shorthaul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. E. Boyle, Jr., Agent, for and on behalf of carriers parties to Agent C. A. Spaninger's tariff I. C. C. No. 809.

Commodities involved: Clay, kaolin or pyrophyllite, carloads.

From: Points in the South. To: Points in Western Trunk Line territory.

Grounds for relief: Competition with rail carriers and circuitous routes.

Schedules filed containing proposed rates: C. A. Spaninger's tariff I. C. C. No.

809, Supplement 131. Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL]

W. P. BARTEL, Secretary.

|F. R. Doc. 50-1705; Filed, Mar. 1, 1950; 8:52 a. m.J

### SECURITIES AND EXCHANGE COMMISSION

SPECIAL OFFERING PLAN

EXTENDING TIME OF EFFECTIVENESS

The Securities and Exchange Commission, acting pursuant to the Securities Exchange Act of 1934, particularly sections 10 (b) and 23 (a) thereof and § 240.10b-2 (d) (Rule X-10B-2 (d) thereunder), deeming it necessary for the exercise of the functions vested in it, and having due regard for the public interest and for the protection of investors, does hereby declare the special offering plans of the New York Stock Exchange, the New York Curb Exchange and the San Francisco Stock Exchange, as now effective, to be effective until the close of business on April 29, 1950, on condition that if at any time it appears to the Commission necessary or appropriate in the public interest or for the protection of investors so to do, the Commission may suspend or terminate the effectiveness of any or all of said plans by sending at least ten days' written notice to the respective Exchange.

The Commission for good cause finds that the notice and public procedure specified in sections 4 (a) and (b) of the Administrative Procedure Act are unnecessary since the above special offering plans are similar to plans heretofore declared effective for such Exchanges; and the Commission finds further that paragraph (d) of Rule X-10B-2 and the action taken have the effect of granting exemption and relieving restriction and, therefore, such action may be effective immediately.

Dated: February 24, 1950.

By the Commission.

ORVAL L. DUBOIS, Secretary.

[F. R. Doc. 50-1684; Filed, Mar. 1, 1950; 8:47 a. m.l

[File No. 70-2330]

INDIANA & MICHIGAN ELECTRIC CO.

NOTICE OF FILING

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C. on the 24th day of February A. D. 1950.

Notice is hereby given that Indiana & Michigan Electric Company ("Indiana & Michigan"), an electric utility subsidiary of American Gas & Electric Company, a registered holding company, has filed an application pursuant to the Public Utility Holding Company Act of 1935, and has designated Section 6 thereof as applicable to the proposed transactions which are summarized as follows:

Indiana & Michigan proposes to borrow from time to time prior to December 31, 1950, sums not to exceed in the aggregate \$5,000,000 from the banks named below and in the amounts shown:

Name of bank	Address	Amount
Irving Trust Co	New York, N. Y	\$1,500,000
New York. Bankers Trust Co Mellon National Bank	do	1,000,000
& Trust Co. Total		5, 000, 000

Such borrowings will be evidenced by promissory notes dated as of the date of the borrowings, maturing no later than nine months after the date of issuance, and bearing interest at the then current prime credit rate. The application states that the initial borrowings will be in the aggregate amount of \$2,000,000, will be made on or about April 1, 1950, and will bear interest at the current prime credit rate, which the company is informed will be 2% per annum. Subsequent borrowings will bear interest at the then current prime credit rate.

Indiana & Michigan agrees that at least ten days prior to each borrowing subsequent to the initial borrowing it will file an amendment herein, setting forth the amount of said borrowing and annual interest rate thereon. It requests that such amendment, or amendments, become effective ten days after the filing thereof, provided no action is taken with respect thereto within such ten-day period by the Commission.

The application states that the proceeds from the proposed borrowings will be used in connection with the construction program of Indiana & Michigan, which the company estimates will entail the expenditure of approximately \$36,-000,000 during the years 1950 and 1951. It is further stated that the notes now proposed to be issued will be repaid from the proceeds of permanent financing later in the year. In this connection, reference is made to the previous commitment of American Gas to invest \$10,-600,600 in the common stock of Indiana & Michigan out of the proceeds from the sale of common stock by American Gas contemplated this year. (American Gas and Electric Company, — S. E. C. — (1949), Holding Company Act Release No. 9234.)

Applicant requests that the order herein be issued as promptly as may be practicable and that such order become effective forthwith upon its issuance.

Notice is further given that any interested person may, not later than March 9, 1950, at 5:30 p. m., e. s. t., request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request and the issues, if any, of fact or law raised by said application which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after March 9, 1950, at 5:30 p. m., e. s. t., said application as filed, or as amended, may be granted as provided in Rule U-23 of the rules and regulations promulgated under the act, or the Commission may exempt such transactions as provided in Rule U-20 (a) and Rule U-100 thereof. All interested persons are referred to said application which is on file with the Commission for a statement of the transactions therein proposed.

By the Commission.

[SEAL]

ORVAL L. DUBOIS, Secretary.

[F. R. Doc. 50-1685; Filed, Mar. 1, 1950; 8:47 a. m.)

[File No. 812-653]

CROWN WESTERN INVESTMENTS, INC.

NOTICE OF APPLICATION

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 24th day of February A. D. 1950.

Notice is hereby given that Crown Western Investments, Inc., a registered investment company (hereinafter called "Crown Western"), has filed an application pursuant to section 6 (c) of the Investment Company Act of 1940 for an order of the Commission exempting from the provisions of section 22 (d) of the act an offering of shares of Crown Western at a price below the normal offering price under the circumstances hereinafter described.

Crown Western was organized under the laws of the State of Delaware and is registered under the act as a diversified, management, open-end investment company. The public offering price of its shares is a sum equal to the net

asset value of the shares plus a sales load of  $8\frac{1}{2}\%$  of the offering price and which is subject to the quantity discounts shown in the following table on the value of shares involved in a particular transaction.

Value of shares involved	Discount from offering price	Sales fee payable
\$1 to \$9,909	Percent	Percent 834
\$10,000 to \$24,999 \$25,000 to \$49,999 \$50,000 to \$99,999	214 314 414	5 4
\$100,000 to \$249,999 \$250,000 and up.	51-6 63-2	3 2

However, if a purchaser already owns shares of Crown Western, the value of such shares is added to the value of the shares about to be purchased and the sales load applicable to the shares about to be purchased is calculated according to the aggregate value of all shares. This in effect affords a purchaser who already owns shares of Crown Western a discount from the normal offering price, if the added value of the shares already owned by him results in placing the transaction in a category to which a lower sales load is applicable.

On the other hand, section 22 (d) of the act which is applicable in the prem-

ises, provides as follows:

No registered investment company shall sell any redeemable security issued by it to any person except either to or through a principal underwriter for distribution or at a current public offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person except a dealer, a principal underwriter or the issuer, except at a current public offering price described in the prospectus: Provided, however, That nothing in this subsection shall prevent a sale made (1) pursuant to an offer of ex-change permitted by section 11 hereof including any offer made pursuant to clause (1) or (2) of section 11 (b); (ii) pursuant to an offer made solely to all registered holders of the securities or of a particular class or series of securities issued by the company proportionate to their holdings or proportionate to any cash distribution made to them by the company (subject to appropriate qualifications designed solely to avoid issuance of fractional securities); or (iii) in accordance with rules and regulations of the Commission made pursuant to subsection (b) of section 12.

It would appear therefore that the offering of shares to a purchaser who already owns shares of Crown Western, in the manner described above, may involve an offering of its shares below the normal offering price, in contravention of the provisions of section 22 (d) of the act. Accordingly, Crown Western has filed the instant application for an order of the Commission exempting such method of calculating the sales load from said provisions of the act.

All interested persons are referred to said application which is on file in the offices of the Commission for a detailed statement of the proposed transaction and the matters of fact and law asserted.

Notice is further given that an order granting the application may be issued

by the Commission on or at any time after March 8, 1950 unless prior thereto a hearing upon the application is ordered by this Commission, as provided in Rule N-5 of the rules and regulations promulgated under the act. Any interested person may submit to the Commission in writing, not later than March 6, 1950, at 5:30 p. m., his views or any additional facts bearing upon the application or the desirability of a hearing thereon, or a request to the Commission that a hearing be held thereon. such communication or request should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issue of fact or law raised by the application which he desires to controvert. Any such com-munication or request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C.

By the Commission.

[SEAL]

ORVAL L. DuBois, Secretary.

[F. R. Doc. 50-1685; Filed, Mar. 1, 1950; 8:48 a. m.]

[File No. 70-2311]

NORTHAMPTON ELECTRIC LIGHTING CO. AND NEW ENGLAND ELECTRIC SYSTEM

ORDER GRANTING APPLICATION

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 21st day of February A. D. 1950.

New England Electric System ("NEES"), a registered holding company, and its subsidiary company, Northampton Electric Lighting Company ("Northampton"), having filed an application pursuant to the Public Utility Holding Company Act of 1935, particularly section 6 (b) of the act and Rule U-42 (b) (2) promulgated thereunder, regarding the following proposed transactions:

Northampton proposes to issue and sell for cash to NEES 1,200 shares of additional Capital Stock (par value \$100 per share) having an aggregate par value of \$120,000. Such additional shares are to be offered to NEES, the sole stockholder of Northampton, at a price of \$400 a share, an aggregate of \$480,000. NEES proposes to acquire such shares and will use available cash for such purpose.

Northampton is indebted to NEES in the amount of \$150,000. Such indebtedness consists of advances and notes of which \$100,000 bears interest at the rate of 3% per annum and the remainder is non-interest bearing. Northampton also presently has outstanding \$330,000 of 234% promissory notes which mature May 31, 1951. The notes carry the privilege of prior payment in whole or in part. Northampton proposes to use the proceeds from the proposed stock sale to pay off this indebtedness.

The Massachusetts Department of Public Utilities has approved the issue and sale by Northampton of the additional shares of Capital Stock at the price of \$400 a share.

Incidental services in connection with the proposed transactions by Northampton and NEES will be performed by New England Power Service Company, an affiliated service company, at the actual cost thereof. The cost to Northampton and NEES of such services is estimated not to exceed \$1,000 and \$200, respectively. Total expenses to be borne by Northampton are estimated at \$1,192.

Said application having been filed on January 23, 1949, and notice thereof having been given in the manner and form prescribed by Rule U-23 promulgated under said act, and the Commission not having received a request for a hearing within the time specified in said notice or otherwise, and not having ordered a hearing with respect to said application; and

Applicant having requested that the Commission's order become effective forthwith; and the Commission finding with respect to said application that the applicable provisions of the act and the rules and regulations promulgated thereunder are satisfied, and deeming it appropriate in the public interest and in the interest of investors and consumers that said application be granted forthwith, subject to the terms and conditions prescribed in Rule U-24.

It is ordered, Pursuant to Rule U-23 and the applicable provisions of the Public Utility Holding Company Act of 1935, that said application be, and the same hereby is, granted forthwith, subject to the terms and conditions prescribed in

Rule U-24.

By the Commission.

[SEAL]

ORVAL L. DuBois, Secretary.

[F. R. Doc. 50-1630; Filed, Feb. 28, 1950; 8:46 a. m.]

[File No. 70-2314]

QUINCY ELECTRIC LIGHT AND POWER CO. AND NEW ENGLAND ELECTRIC SYSTEM

ORDER GRANTING APPLICATION

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 21st day of February A. D. 1950.

New England Electric System ("NEES"), a registered holding company, and its public utility subsidiary, Quincy Electric Light and Power Company ("Quincy"), having filed a joint application pursuant to the Public Utility Holding Company Act of 1935, particularly sections 6 (b) and 10 thereof and Rule U-42 (b) (2) of the rules and regulations promulgated thereunder, with respect to the following proposed transactions:

Quincy proposes to issue and sell for cash to NEES 3,750 shares of additional capital stock (par value \$25 per share) of the aggregate par value of \$93,750. Such additional shares are to be offered to NEES, the sole stockholder of Quincy, at the price of \$80 a share, an aggregate of \$300,000. NEES proposes to acquire such shares and will use available cash for such purpose.

Quincy has outstanding promissory notes in the amount of \$300,000 bearing an interest rate of 2% we per annum and maturing May 31, 1951. The notes carry the privilege of prior payment in whole or in part.

Quincy proposes to use the proceeds from the sale of additional shares of capital stock to retire its note indebtedness, aggregating \$300,000 as indicated

in the preceding paragraph.

The Massachusetts Department of Public Utilities has approved the issue by Quincy of the additional shares of capital stock at the price of \$80 a share.

Incidental services in connection with the proposed transactions by Quincy and NEES will be performed by New England Power Service Company, an affiliated service company, at the actual cost thereof. The cost to Quincy and NEES of such services is estimated not to exceed \$1,000 and \$200, respectively. Total expenses to be borne by Quincy are estimated at \$1,150.

Applicants request that the Commission's order become effective upon the

issuance thereof.

Said application having been filed on January 26, 1950, and notice of said filing having been duly given in the form and manner prescribed by Rule U-23 promulgated pursuant to said act and the Commission not having received a request for hearing with respect to said application within the period specified in said notice, or otherwise, and not having ordered a

hearing thereon; and

The Commission finding that the proposed transactions are in compliance with the applicable standards of the act, that no adverse findings are necessary in connection therewith and the Commission deeming it appropriate that said application be granted without the imposition of any terms and conditions other than those contained in Rule U-24 and the Commission also deeming it appropriate to grant applicants' request that the order herein become effective forthwith upon its issuance:

It is ordered, Pursuant to said Rule U-23 and the applicable provisions of said act that said application, be, and the same hereby is, granted forthwith, subject to the terms and conditions con-

tained in Rule U-24.

By the Commission.

[SEAL] ORVAL L. DUBOIS, Secretary.

[F. R. Doc. 50-1629; Filed, Feb. 28, 1950; 8,46 a. m.]

# UNITED STATES MARITIME COMMISSION

PRUDENTIAL STEAMSHIT CORP. ET AL. NOTICE OF APPROVAL OF AGREEMENT

Notice is hereby given that the Commission by order dated February 21, 1950, approved the following described agreement pursuant to section 15 of the Shipping Act, 1916, as amended: Agreement 7690-D, between Prudential Steamship Corporation and the member lines of the India, Pakistan, Ceylon & Burma Outward Freight Conference, provides for the participation of the Prudential Steamship Corporation in the India,

Pakistan, Ceylon & Burma Outward Freight Conference as a nonvoting member.

Interested parties may obtain copies thereof at the Commission's Office of Regulation, Washington, D. C.

Dated: February 21, 1950, at Washington, D. C.

By the Commission.

[SEAL]

A. J. WILLIAMS, Secretary.

[F. R. Doc. 50-1692; Filed, Mar. 1, 1950; 8:50 a.m.]

#### DEPARTMENT OF JUSTICE

#### Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616; E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9768, Oct. 14, 1946, 11 F. R. 11981.

[Return Order 438, Amdt.]

OLAF ROSTE ET AL.

Return Order No. 438, dated September 20, 1949, is hereby amended as

follows and not otherwise:

By deleting the name of Olaf Roste as a claimant and by deleting under the heading "Property" the words "\$1,508.64 in the Treasury of the United States returnable in equal shares of \$125.72 to the claimants" and substituting therefore the words "\$1,432.31 in the Treasury of the United States returnable in equal shares of \$130.21 to the claimants".

All other provisions of said Return Order No. 438 and all actions taken by or on behalf of the Attorney General of the United States in reliance thereon, pursuant thereto and under the authority thereof are hereby ratified and

confirmed.

Executed at Washington, D. C., on February 24, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director

[F. R. Doc. 50-1709; Filed, Mar. 1, 1950; 8:52 a. m.]

Office of Alien Property.

LOUISE MARIE RENEE SIMONE OSSOLA NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Louise Marie Renee Simone Ossola, 4, Rue Cremieux, La Garenne-Colombes, France; Claim No. 36418; property to the extent owned by claimant and Marie Fanton d'Andon immediately prior to the vesting thereof by Vesting Order No. 3430 (9 F. R. 6464, June 13, 1944; 9 F. R. 13768, November 17, 1944), relating to the literary works "The Odd Number" and "The Second Odd Number" (listed in Exhibit A of said vesting order) including royal-ties pertaining thereto in the amount of \$240.46.

Executed at Washington, D. C., on February 24, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

[F. R. Doc. 50-1710; Filed, Mar. 1, 1950; 8:52 a. m.]

EDITIONS ROUART, LEROLLE & CIE.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Editions Rouart, Lerolle & Cie., c/o Editions Salabert, 22 Rue Chauchat, Paris, France; Claim No. 30075; property to the extent owned by claimant immediately prior to the vesting thereof by Vesting Order No. 3501 (9 F. R. 6123, June 6, 1944) relating to works listed in a catalogue entitled "Rouart, Lerolle & Cie., Editeurs de Musique Nouveautes" (listed in Exhibit A of said vesting order), including royalties pertaining thereto in the amount of \$825.65.

Executed at Washington, D. C., on February 24, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

[F. R. Doc. 50-1711; Filed, Mar. 1, 1950; 8:52 a. m.]

#### JULIET LORD TURNER

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Juliet Lord Turner, Florence, Italy; Claim No. 6492; \$41,958.55 in the Treasury of the United States.

Executed at Washington, D. C., on February 24, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

[F. R. Doc. 50-1712; Filed, Mar. 1, 1950; 8:52 a. m.]